Labour Canada Travail Canada

Highlights of Major Developments in Labour Legislation

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HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

September 1991 to September 1992

I. EMPLOYMENT STANDARDS

A. Legislation of General Application

Nova Scotia has adopted An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code. The main thrust of this Act is to make the provincial legislation compatible with the federal Unemployment Insurance Act provisions respecting parental leave. The Act provides up to 17 weeks parental leave upon the birth or adoption of a child, available to both parents, regardless of the entitlement of the other parent. The leave is provided to any employee covered by the Labour Standards Code who has completed one year's service with the same employer. The parental leave is provided in addition to the existing maternity leave. The Act requires that where a mother takes the 17 weeks maternity leave already provided under the Act, as well as the parental leave, the two periods of leave must be taken consecutively to one another for a combined unbroken period of up to 34 weeks. A natural father or adoptive parents may take the parental leave at anytime within one year after the child's birth or arrival in the home. One interruption in the period of parental leave is permitted where the child is hospitalized for a period exceeding or likely to exceed one week. An employee on pregnancy or parental leave has the option of maintaining, at her/his own cost, any benefits or pension plan in which the employee was participating before taking the leave.

The Act also provides bereavement leave of up to three days without pay, in the case of the death of a member of the immediate family, or one day in the case of other relatives, as well as such leave as may be required for jury duty or to appear as a witness.

The Act abolishes the Minimum Wage Board and transfers to the Provincial Cabinet the Board's regulation-making functions. An annual review of the minimum wage rates is required. The requirement is for an annual review, and not necessarily for an annual increase. The provision permitting the adoption of separate minimum wage rates for male and female employees has been removed.

Important amendments, which deal with the recovery of unpaid wages, ensure greater protection of the claim for wages and increase the effectiveness of the statutory recovery mechanisms. The Act provides greater powers for the Labour Standards Director to force employers to comply with the Act. The Director is authorized to deal with an employer's creditors to ensure the salaries and benefits owed to employees are paid. Claims for wages are given first priority under the legislation, ahead of other creditors' claims on the assets of an employer.

Finally, the Act extends the full benefit of annual vacations with pay to part-time workers. Part-time workers in Nova Scotia were previously normally entitled to only the vacation pay, and not the leave.

This Act came into force on July 11, 1991, the date of assent.

Pursuant to last year's changes to the Labour Standards Act, the **Northwest Territories** adopted the Pregnancy and Parental Leave Regulations under that Act. These regulations repeal and replace the Maternity Leave Regulations and provide that before an employee is entitled to maternity or parental leave he or she must have been employed for 12 consecutive months with the same employer.

Newfoundland recently adopted An Act to Amend the Labour Standards Act. This Act makes various amendments concerning vacation pay, public holiday pay, parental leave, bereavement leave and sick leave. It will also replace the Labour Standards Tribunal with a system of single

adjudicators to whom complaints are referred by the Minister of Employment and Labour Relations. The Act, except for the provisions respecting the adjudication system, came into force on the date of assent, June 11, 1992.

Vacation pay is payable to an employee who has been terminated within one week (down from two weeks) of the termination.

An employer who requires an employee to work on a paid public holiday must pay to the employee twice his/her regular wages. If the employee works for a number of hours that is less than his/her normal working hours for one day, the employer must pay the employee one full day's pay plus his/her regular rate for all hours worked. Employees who have been absent from work, except on leave provided in this Act, for more than 15 days within the 30 days preceding the holiday are not entitled to be paid for the holiday.

The Act provides employees with an unbroken rest period of one hour after each five consecutive hours of work. However, the terms of a collective agreement or of a written contract of employment may vary that period. Previously, employees other than those employed in retail or wholesale undertakings were entitled to a rest period of one-half hour only.

The provision allowing for the adoption of special minimum wage rates for disabled persons is repealed. A new provision allows for the adoption of special minimum wage rates for apprentices or inexperienced employees.

A period of 17 weeks of maternity leave is available to a pregnant employee who has been employed for at least 20 consecutive weeks with the same employer and has given two weeks' notice to the employer of when the leave is to begin and a medical certificate stating the estimated date of birth. The notice and the certificate must be provided within two weeks of stopping work if an employee has stopped work because of complications caused by her pregnancy or because of a birth, still-birth or miscarriage that happens earlier than the expected date of birth. A minimum of 6 weeks of leave must follow the birth, still-birth or miscarriage if an employee is not entitled to the parental leave described below. If necessary, the 17 weeks' maternity leave must be extended in such a case.

A period of 17 weeks' adoption leave is available to an employee who has been employed for 20 consecutive weeks and has given two weeks' notice to the employer. Where the child comes into the actual care and custody of an employee sooner than expected, the notice must be given within two weeks of stopping work.

A period of 12 weeks' parental leave is available to an employee who has been employed for 20 consecutive weeks and has given two weeks' notice to the employer following the birth or adoption of a child. The leave is to begin no later than 35 weeks after the child is born or comes into the care or custody of the parent for the first time. However, in the case of an employee who takes maternity leave, the parental leave must begin when the maternity leave ends, except if the child has not yet come into the care and custody of the parent. If the child has come into the care and custody of the parent sooner than expected, the two weeks' notice must be given within two weeks of the day the employee stops working.

Notices given may be changed, provided the employer disposes of two weeks before the leave begins. The maternity, adoption or parental leaves may be shortened, provided the employee gives the employer a four week notice of the date the employee intends to return to work.

The terms of the contract of employment must be resumed at the end of the leaves, in such a way that the wages, duties, benefits and position of the employee are not less beneficial than those that subsisted before the leave began. Unless the employer and employee agree, the application of rights, benefits and privileges conferred by this Act do not accrue during these periods of leave.

An employer cannot dismiss or give notice of dismissal to an employee for the reason only that the employee informs the employer that she is pregnant, or that the employee intends to take or has taken maternity, adoption or parental leave. The onus of proof that the reason for dismissal is unrelated to maternity, adoption or parental leave rests with the employer.

Bereavement leave of one day of paid leave and two days of unpaid leave must be given to an employee who has been employed for at least one month in the event of the death of the employee's spouse, child, mother, father, brother, sister, grandparent, mother-in-law, father-in-law, brother-in-law, or sister-in-law.

Sick leave of five unpaid days per year must be granted to an employee who has been employed for six months or more, upon the presentation of a medical certificate.

An employer cannot dismiss or give notice of dismissal to an employee by reason of sick leave or bereavement leave. The onus of proof rests with the employer.

Where an employer terminates or lays off an employee employed in a remote site, the employer must provide transportation without cost to the employee to the nearest point at which regularly scheduled transportation services are available.

As mentioned above, this Act will replace the Labour Standards Tribunal with a system of single adjudicators. These provisions will come into force on a date fixed by proclamation. The Lieutenant-Governor in Council will appoint a panel of six persons from which the Minister may appoint single adjudicators to dispose of any complaint under the Act. When holding a hearing, an adjudicator will be vested with the powers conferred on a commissioner under the Public Enquiries Act. An adjudicator will be empowered to consider, review, hear and decide upon a matter referred to him or her by the Director of Labour Standards, a person aggrieved by a determination of the Director, or by the Minister upon receiving a request to do so from a person alleging a breach by an employer or employee of a provision of Parts I to IX of the Act or of the regulations. Many other changes to the Act will become effective consequentially to this amendment.

Finally, the Director is empowered to effect a wider range of settlements when dealing with a matter. Other powers and duties of the Director are clarified, such as the power to appeal a decision of an adjudicator to the court, and the fact that the Director does not act on behalf of a complainant when referring matters to an adjudicator or appealing to the court. The Director or an officer must provide any person affected by an investigation an opportunity to be heard. A complaint to the Director may not be made after the expiry of six months from the event giving rise to it.

Prince Edward Island recently adopted a new Employment Standards Act, which was proclaimed into force on November 1, 1992, and replaces Part III of the Labour Act. It generally improves the clarity of the employment standards legislation and makes notable substantive changes. The Act modifies the composition of the Employment Standards Board, bringing the number of its members from five to seven, and enables the Board to establish panels of three members to deal with complaints under the Act.

An employer is obliged to give an employee the vacation he or she has earned after four months, reduced from 10 months, after the anniversary date of employment. The qualifying period for maternity, parental or adoption leave is reduced from 12 months to 20 weeks.

New provisions provide for bereavement leave of up to three days upon the death of a member of the employee's immediate family. "Immediate family" means the spouse, common-law spouse, child, parent, brother or sister of an employee.

New sexual harassment provisions stipulate that every employee is entitled to employment free of sexual harassment and that every employer must make every reasonable effort to ensure that no employee is subjected to sexual harassment. The employer has the obligation to issue a policy statement respecting harassment, after consultation with the employees, consistent with the provisions of this Act.

Notice of termination provisions provides that an employee with more than six months of service, but less than five years, is entitled to two weeks' notice, and an employee with more than five years of service is entitled to four weeks' notice. The employee cannot terminate his or her employment without giving the employer one week's notice, where the employee has been employed for more than six months, but less than five years, or two weeks' notice, if employed for more than five years. The previous notice of termination provisions required that one week's notice be given to an employee with three months of service or more, and an employee could not terminate his or her employment without giving the employer a similar notice.

The recovery of unpaid wages provisions provide, as they did previously, that an employee may lodge a complaint with an inspector, who will inquire into the matter and determine whether a provision of this Act has been contravened. The inspector is also empowered to inquire where he or she has reasonable grounds to believe that there has been a failure to comply with the Act. The order of an inspector is limited to directing a defaulting employer to pay any unpaid wages, overtime pay, or vacation pay not exceeding $5,000 owing to an employee and/or any benefits to which an employee is entitled, but which are not required to be paid directly to the employee. The Act also provides that an appeal of the inspector's decision can be lodged with the Employment Standards Board, in much the same way that an appeal was allowed to the Employment Standards Advisory Board under the previous provisions.

The new Act provides that the inspector is vested with the power to bring any action in any court to pursue any claim for unpaid wages or other amounts due under this Act, on behalf of the Board, any employee or any group of employees. An inspector or the employee or group of employees can enter with the Registrar of the Supreme Court an order issued by an inspector or by the Board. The order thus becomes enforceable as if it were an order of the Supreme Court.

In addition, the amount set out in the order of an inspector constitutes a lien, charge and secured debt in favour of the inspector against all real and personal property of the defaulting employer, including amounts due or accruing due to the employer from any source. This amount is protected by a super-priority, payable and enforceable in priority to all liens, judgements, charges, or any other claims or rights, including those of the Crown, whether made or created before or after the date the wages or benefits were earned or became payable.

The inspector is also empowered to issue third party demands against persons owing money to a defaulting employer. A registered letter, or a letter served personally to the third party, demanding

that the amounts due to the defaulting employer be paid in trust to the inspector is all that is required to accomplish this. A person making a payment in trust to the inspector is discharged from the original liability to the extent of the payment. If a person does not comply with a third party demand, that person becomes liable to pay an amount equal to the amount that was owing to the defaulting employer, or the amount of unpaid wages or benefits.

The Act also provides for the declaration of other provinces to become reciprocating provinces for the purpose of reciprocal enforcement of orders.

Quebec adopted An Act to amend the Act respecting labour standards and other legislative provisions to provide that, where July 1 falls on a Sunday, the paid general holiday is given on July 2. This amendment precludes giving the holiday on the Monday preceding or following July 1st, as provided under the former provision. The Act respecting hours and days of admission to commercial establishments is also amended for the same purpose.

In addition, this Act makes certain housekeeping amendments destined to simplify the administration of the Act respecting labour standards and provides for the appointment of a Vice-chairperson to the Labour Standards Commission and defines his/her duties.

Finally, the Act amends the National Holiday Act to increase the amount of the prescribed fines. This Act came into force on the date it received royal assent, June 23, 1992.

Quebec also adopted a regulation suspending the application of Section 41.1 of the Act respecting labour standards for employees working in an establishment whose principal activity is the wholesale or retail trade of food products or the storage of such products, effective January 1, 1992. Section 41.1 of the Act, which also became effective on January 1, 1992, provides that no employer may pay an employee who earns twice the minimum wage or less a lower rate of pay than that granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works less hours each week.

The **Yukon Territory** adopted An Act to Amend the Employment Standards Act, which gives effect to a major review that began last fall. The Act makes a number of substantive changes and brings greater clarity to certain provisions. For example, the definitions of "employer", "wages" and "week" are amended to make the Act simpler to apply. In addition, the Employment Standards Act will apply to government employees by January 1, 1995.

With respect to hours of work provisions, employees may refuse to work overtime unless the employer gives 24 hours' notice or if there is an emergency. The employee can also be exempted from working overtime where proper notice has been given if the employee has an emergency. Employers and employees can enter into a written agreement for compensatory time off in lieu of overtime pay. Each overtime hour worked must be compensated at a rate of one and one-half hours of paid time off work, given within the following 12 months. Compressed work-weeks arrangements are made more flexible, by spreading working time over a two week period. Variances to hours of work provisions can be approved by the Director of Employment Standards, to accommodate the extension of split shifts over longer periods than 12 hours, where the employer and employee agree.

Employees are entitled to a third week of paid vacation after five years of continuous employment with the same employer. After five years, employees are entitled to 6 per cent of their wages as vacation pay.

Any employee may be required to work on a holiday. In such a case, the employer must pay the employee his/her regular rate for the day, plus his/her regular rate for all hours worked and a day off without pay, or give the employee his/her regular pay plus another day off with pay. This provision previously applied only to workers employed in custodial work, essential services or continuous operations.

Employees who have worked for an employer for 12 months or more and give him/her at least four weeks' notice are entitled to take 17 weeks of unpaid parental leave. The leave is to be taken within 52 weeks of the birth or adoption of a child, or the date the child comes into the actual care and custody of the parents. Both parents can take the leave. If they work for the same employer, the leave cannot be taken at the same time, or exceed a total combined period of 17 continuous weeks. Employees are required to give at least four weeks' notice to their employer of their date of return to work. Employees who fail to give the notice are presumed to have terminated their employment. Parental leave provisions also apply to common-law and same-sex couples.

An employee who has completed six consecutive months of employment or more, but less than one year, is entitled to one week of notice of termination of employment; an employee with one year or more, but less than three years, is entitled to two weeks' notice; an employee with three years, but less than four, to three weeks' notice; an employee with four years, but less than five, to four weeks' notice; an employee with five years, but less than six, to five weeks' notice; an employee with six years, but less than seven, to six weeks' notice; an employee with seven years, but less than eight, to seven weeks' notice; and an employee with eight years or more is entitled to eight weeks' notice of termination.

An employee who has been employed six months or more, but less than two years, must give his or her employer at least one week's notice before terminating his or her employment; an employee with two years of service, but less than four, must give two weeks' notice; an employee with four years, but less than six, three weeks; and an employee with six years or more of service must give at least four weeks' notice.

Unpaid sick leave can accrue to 12 days in a year, an increase from six days. Bereavement leave provisions have been amended to increase from three days to up to one week the duration of the unpaid leave, and to expand the list of relatives whose death gives rise to the leave. The list now includes the spouse (including a common-law or same-sex spouse), parent, child (including a foster parent's child), brother, sister, father of the spouse, mother of the spouse, step-mother, step-father, grandparent, grandchild, son-in-law, daughter-in-law, and any other relative permanently residing with the employee. The bereavement leave provisions also apply in cases of First Nations employees to let them prepare for funerals and potlatches according to clan customs. A new provision of the Act provides for the adoption of regulations respecting family responsibility leave. No such regulations have, as yet, been adopted.

Record-keeping rules have been clarified. Employers are now required to keep complete and accurate records concerning an employee for up to one year after the last day worked. Wages must be paid within ten days after the regular pay period, and seven days after termination (up from seven and three days, respectively). Termination pay may be paid in instalments. Deductions from wages are prohibited, except for statutory deductions and garnishments. However, written assignment of wages may be honoured by the employer.

The limitation period for filing a complaint is shortened from one year to six months. The rules for non-certificate appeals and referrals to the Employment Standards Branch have been clarified. Employers are required to deposit $250 on appeal.

The number of members of the Employment Standards Board is increased from five to seven. The powers of the Board have been somewhat increased. The Board can award interest on the amounts set out in a certificate. It can also determine the number of hours of work for which an employee claims to be unpaid, up to 10 per day, 60 per week, or those alleged by the employee, in the absence of records or where both parties' records are not credible. The Board may impose a penalty of up to $1,000 in cases where this is warranted. Board members now also enjoy immunity from legal action.

Finally, with respect to the fair wages provisions, the schedule to the Act is clarified and provision is made for the adoption of regulations. If an employer is convicted of multiple offences to the Fair Wage Schedule, his privilege to bid on government contracts may be withdrawn.

This Act received royal assent on June 2, 1992 and will come into force upon proclamation, except section 6, which provides that the Act applies to the Government and its employees. Section 6 will come into force on January 1, 1995, or on the date of the signing of the next collective agreement, whichever is sooner.

Alberta has undertaken a review of its employment standards legislation. The government released a discussion paper in November, 1991 and a series of public consultation seminars were held in the province during December, 1991 and January, 1992, in order to obtain views on updating the provisions of the Employment Standards Act.

Ontario will amend the Employment Standards Act with respect to employment rights in certain contracting-out of services situations and termination of employment provisions. These proposed changes, contained in Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment, are described hereafter in Part II, Section A.

B. Minimum Wages

Alberta amended its Minimum Wage Regulation, in order to increase the minimum wage rates, effective April 1, 1992. The general rate was increased from $4.50 to $5.00 an hour. The rate payable to an employee under 18 years of age who attends school and who is employed outside his or her normal school hours or on a weekend, a vacation period or any other day that the school is officially closed passed from $4.00 to $4.50 an hour. The rate payable to various categories of salespersons was increased from $180.00 to $200.00 a week. Deductions for board and lodging were amended as follows: a) $1.65 for a single meal (up from $1.50); and b) $2.20 a day for lodging (up from $2.00). This regulation came into force on April 1, 1992.

British Columbia repealed and replaced parts of the Minimum Wage Regulation to provide various increases in the minimum wages, effective February 1, 1992. The minimum wage payable to persons 18 years of age and over has been increased to $5.50 per hour, up from $5.00. The rate payable to persons under 18 was increased from $4.50 to $5.00 per hour. Live-in homemakers, domestics, farm workers or horticultural workers paid on a basis other than on an hourly or piece-work basis increased from $40 to $44 per day or part of day worked. The minimum wage for a

resident caretaker was set at $330 per month, plus $13.20 per unit, where the apartment building contains from 8 to 60 residential suites, and at $1,120 per month, where the apartment building contains 61 units or more. Also effective February 1, 1992, there have been increases in the minimum wages for farm workers employed on a piece-work basis to hand harvest certain fruit, vegetable or berry crops, by gross volume or weight picked.

In Nova Scotia, the second part of a two stage increase described in the last issue of the *Highlights* became effective on January 1, 1992. The general minimum wage rate was raised from $4.75 to $5.00 an hour, and the rate payable to employees 14 to 18 years of age passed from $4.30 to $4.55 an hour.

Ontario has raised its minimum wage rates in accordance with the announcement reported in last year's issue of the *Highlights*. A regulation amending the General Regulation under the Employment Standards Act became effective November 1, 1991. The general rate has been increased from $5.40 to $6.00 per hour. The rate applicable to students under 18 employed for not more than 28 hours in a week or during a school holiday has been increased from $4.55 to $5.55 per hour. Employees who serve liquor are entitled to $5.50 per hour, up from $4.90. Hunting and fishing guides are entitled to $30 for less than five consecutive hours in a day, and to $60 for five or more hours in a day, whether or not the hours are consecutive. These amounts have been increased from $27 and $54, respectively.

In addition, this regulation establishes, effective November 1, 1991, the maximum amount at which are valued meals and/or rooms, if these have been taken into account by an employer in calculating the minimum wage of an employee, as follows:

- Room: $27.80 a week if the room is private and $13.90 a week if it is not.

- Meals: $2.20 a meal and not more than $46.20 a week.

- Both room and meals: $74.00 a week if the room is private and $60.10 a week if it is not.

Similarly, the Fruit, Vegetable and Tobacco Harvesters Regulation under the Employment Standards Act was amended to increase the minimum wages payable to these categories of workers, effective January 1, 1992. The rate payable to students under 18 employed for not more than 28 hours in a week or during a school holiday has been increased from $4.55 to $5.55 per hour. The rate payable to all other employees falling within these categories has been increased from $5.40 to $6.00 per hour.

The maximum deductions for room and/or board under this regulation have been increased, effective January 1, 1992, to the same levels as those reported above. Those for housing accommodation have been increased as follows:

- Serviced housing accommodation: $87 per week.

- Housing accommodation: $64.20 per week.

On July 31, 1992, Ontario's Minister of Labour, the Honourable Bob Mackenzie, announced the general minimum would increase to $6.35 an hour, effective November 1, 1992. This represents a 5.8 per cent increase that matches the rise in the average wage and maintains the minimum wage

at about 51 per cent of the average wage. In order to support two hard-hit sectors, the hospitality and retail sectors, the wage differential for students will be retained and the minimum wage for liquor servers will be frozen at $5.50 an hour. The student minimum wage will also be increased by 35 cents, to $5.90 an hour. The room and meal deductions will be increased by the same percentage increase in the general minimum wage. Effective January 1, 1993, harvest workers will be entitled to the minimum wage of $6.35 an hour, and hunting and fishing guides will receive the same percentage increase in their daily and half-day rates. Mr. Mackenzie indicated that the pace and the level of future minimum wage increases will continue to be decided in the context of prevailing economic conditions and in keeping with other government initiatives benefiting lower-paid workers.

Quebec has published a draft regulation announcing its intention to amend the minimum wage provisions of the Regulation respecting labour standards, effective October 1, 1992. The general rate will be increased from $5.55 to $5.70 an hour. The rate payable to employees who usually receive gratuities will be raised from $4.83 to $5.00 an hour. Domestics who reside in the employer's home will be entitled to $221 per week, up from $215 per week.

In addition, maximum deductions for a room and meals will be as follows:

- $1.25 per meal, up to $16.78 per week;
- $16.78 per week for a room;
- $33.56 per week for a room and meals.

C. Sunday Shopping

In November, 1991, **New Brunswick** amended its Regulation under the Days of Rest Act in order to permit Sunday shopping in most retail establishments in the period between November 3, 1991 and December 31, 1991.

Also in New Brunswick, an Act to Amend the Days of Rest Act received royal assent and came into force on May 20, 1992. This Act provides greater discretion to allow retail establishments to open on Sundays. Regulations may be made to exempt specified retail establishments, on specified Sundays. Where such regulations are adopted, the permits previously issued by the Municipal Affairs Board would be superseded to the extent of the provisions of the regulations. The Act also empowers the Minister of Municipal Affairs to issue a permit exempting all retail establishments located in the area where a festival or special event is to be held from closing on specified Sundays and on Holidays.

In Ontario, the Retail Business Establishments Statute Law Amendment Act, 1991, which received royal assent on November 25, 1991, amended the Retail Business Holidays Act and the Employment Standards Act to permit retail business establishments to be open on the Sundays in December preceding Christmas Day, while allowing at least thirty-six consecutive hours off work every week and enabling employees to refuse Sunday work which they deem unreasonable. Employees are awarded increased protection under the Employment Standards Act for their participation in any public hearing respecting a proposed municipal by-law concerning Sunday shopping in December, or in any appeal or court challenge of the by-law.

On June 3, 1992, Ontario introduced a Bill entitled An Act to amend the Retail Business Holidays Act in respect of Sunday Shopping. This Bill will enable retail establishments to open on Sundays. Easter Sunday and other holidays which fall on a Sunday will remain as retail business holidays. The Bill also specifies that terms in leases requiring Sunday openings will be of no effect. The Bill will come into force retroactively to June 3, 1992.

D. Recovery of Unpaid Wages

Ontario adopted the Employment Standards Amendment Act (Employee Wage Protection Program), 1991. The main purpose of the program is to help workers recover unpaid wages when their employer is bankrupt, insolvent or when the employer does not pay because of other circumstances (which includes the case of "walk-aways"). Unpaid workers are required to file a complaint with the Employment Standards Branch and, once the validity of the claim is determined, an order to pay, which is limited to a maximum of $5 000, is issued against the defaulting employer. If the employer fails to pay and does not appeal the order, the claimant is reimbursed by the program. Where an employer appeals, the program pays out only after a worker's entitlement to compensation is established. The Branch, which becomes subrogated in all the rights of the employee to recover the unpaid wages, then attempts to recover the money paid out from the employer or directors, using, among other things, the liability provisions of this Act.

Amendments were made to the Act during passage which removed the proposed liability of officers of a company for wages and vacation pay owing to workers, so that the liability remains only for its directors. In addition, the appeal process has been revised during passage to ensure that employers, directors and employees not become tied up in lengthy and protracted recovery procedures.

This Act came into force on October 18, 1991, except for section 6, which was proclaimed into force on January 20, 1992.

This section provides that directors are jointly and severally liable to the employees up to a maximum of the equivalent of six months' wages and 12 months' vacation pay. An employment standards officer who makes an order for wages against an employer is empowered to make, at the same time or subsequently, an order against all or some of the directors of the employer. A director who fails to comply with an order to pay wages is guilty of an offence and is liable upon conviction to a fine not exceeding $50,000. A director cannot contract out of liability under the Act but the employer may indemnify a director in respect of any proceeding to which the person, in his or her capacity as director, is a party. All civil remedies that a person may have against a director or that a director may have against any person are not affected by these provisions.

Ontario also adopted the Employee Wage Protection Program Regulation under the Employment Standards Act. This regulation makes clear what types of claims for wages are eligible under the Program and the manner in which they are to be apportioned. Compensation from the Program is to first be attributed to regular wages (including commissions, overtime wages, vacation pay and holiday pay), to amounts owing resulting from the application of the equal pay for equal work provisions of the Act, and amounts still due with respect to a Non-Payment Order issued by an Employment Standards Officer. If the maximum compensation has not been reached, compensation is attributed to severance pay. If the maximum has still not been reached, compensation is attributed to termination pay (i.e. pay in lieu of notice). If any amount of compensation then remains outstanding, additional payments can be made with respect to various benefit plans, namely, pension

plans, life insurance plans, accidental death plans, extended health plans, dental plans and disability plans.

In addition, where a multi-employer collective agreement applies in the construction industry, and the collective agreement establishes a benefit plan, the trustees of the plan may request, under certain conditions, that part of the compensation extended to an employee be diverted to the plan. However, the amount thus assigned cannot exceed the amount that the employee would have received in accordance with the apportionment of compensation described above.

Overpayments may be recovered by the administrator of the Program, in cases where he is of the opinion that the repayment would not impose undue hardship upon the beneficiary, or the administrative costs of recovering the overpayment do not exceed the amount of the overpayment.

This regulation came into force on October 18, 1991.

The **federal** government gave royal assent to Bill C-22, An Act to amend the Bankruptcy Act and to amend the Income Tax Act in consequence thereof, on June 23, 1992. Among other things, this Act increases from $500 to $2,000 the amount of the preferred claim for unpaid wages provided in section 136(1)d) of the Bankruptcy Act. This modification came into force on August 1, 1992.

Manitoba has repealed its Wages Recovery Act. This Act provided a summary proceeding before a justice of the peace permitting employees to claim up to $500 in unpaid wages. The Law Reform (Miscellaneous Amendments) Act, which was assented to on June 24, 1992, made the repeal effective on the date of assent.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

On December 5, 1991, the **federal government** adopted Bill C-44, An Act to amend the Canada Labour Code (geographic certification), which came into force on the same date.

This Act has modified section 34 of the Canada Labour Code. Section 34 permits the Canada Labour Relations Board (CLRB) to grant a geographic certification to a trade union representing employees of two or more employers in a given geographic area in the longshoring industry, provided that the employers draw their employees from a common labour pool.

When the CLRB grants a geographic certification, the employers of the employees in the bargaining unit are required to appoint an agent to act on their behalf and to authorize the agent to discharge the duties and responsibilities of an employer under Part 1 of the Code (Industrial Relations).

The Act provides for the appointment of an employer representative by the CLRB should the employers affected by a geographic certification order fail to do so. No appointment is made until the employers have had a reasonable opportunity to make representations.

An employer representative is required to discharge all the duties and responsibilities of an employer under Part 1 of the Code on behalf of all the employers of the employees in the bargaining unit, and has, among other things, the power to conclude a collective agreement.

Moreover, the CLRB is given the power to decide any question that arises concerning the application of section 34.

The Act imposes upon an employer representative the duty to fairly represent the employers on whose behalf he/she acts. An employer who believes that the employer representative has acted in a manner that is arbitrary, discriminatory or in bad faith in the carrying out of his/her duties and obligations may file a complaint with the CLRB which has the power to issue remedial orders, as necessary.

On December 11, 1991, **Newfoundland** passed Bill 47, An Act to amend the Labour Relations Act, 1977 (NO. 3). The most notable changes include the following:

1. to provide that a unionized employer, a trade union or an organization representing either of them may apply to the Labour Relations Board for the determination of a jurisdictional dispute between unions by a jurisdictional umpire appointed as a member of the Board by the government (if the relevant collective agreement provides for a dispute resolution mechanism for jurisdictional disputes, this provision does not apply unless both parties give their approval);

2. to provide for compulsory multi-trade bargaining in the industrial and commercial sector of the construction industry in the province between a council of trade unions and an accredited employers' organization composed of the unionized employers in the sector (these provisions can be extended to other sectors of the construction industry by order of the Minister of Employment and Labour Relations; however, the compulsory multi-trade bargaining process does not apply to special projects for which an order has been made under the Act);

3. to give the Labour Relations Board the power to declare corporations, partnerships, persons or associations of persons carrying on associated or related activities or businesses, under common control or direction in the construction industry, to be a single employer for the purposes of the Act; (The Board may issue such a declaration only when it considers it necessary to preserve bargaining rights held by a trade union or to prevent an employer from avoiding the application of the Act.); and

4. to require that an employer, purchaser, lessee, or transferee provide the Labour Relations Board, when ordered to do so, with all facts within his/her knowledge respecting the alleged sale, lease or transfer of a business.

These amendments took effect on December 11, 1991 for change number 1 and on February 1, 1992 for changes number 3 and 4. The other change will come into force by proclamation.

In **Quebec**, An Act to amend the Act respecting the Conseil consultatif du travail et de la main-d'oeuvre and other legislation was assented to and came into force on December 18, 1991.

This Act provides that the Advisory Council on Labour and Manpower must release the general policy taken into consideration for the purpose of advising the Minister of Labour in respect of the list of disputes arbitrators who may be appointed when the parties agree to refer a labour conflict to arbitration but disagree on the choice of the arbitrator. This policy may include criteria for the appraisal of the arbitrators' qualifications and conduct.

The Council is authorized to examine the complaints it receives concerning the remuneration paid to and the expenses claimed by the arbitrators whose names appear on the list as well as those concerning their conduct and qualifications. It also examines any complaint concerning an arbitrator submitted to it by the Minister. The Council attempts to settle complaints to the satisfaction of the complainant and the arbitrator and, if no settlement is reached, it transmits its findings together with the recommendations it considers appropriate to the Minister of Labour.

The Act specifies that the members of the Council may not be prosecuted by reason of any act done in good faith in the performance of their duties.

Moreover, it requires that the Council be consulted before the adoption of any regulation on the remuneration and expenses to which interest and grievance arbitrators are entitled.

In **Manitoba**, Bill 85, the Labour Relations Amendment Act, was adopted on June 24, 1992. It contains a number of changes to the Labour Relations Act. The objectives of modifications, which came into force on June 24, 1992, are as follows:

- to repeal a provision of the Act which deemed certain statements by an employer during the certification process to be an unfair labour practice (this is replaced with the previously existing general prohibition on the use of intimidation, coercion, threats, undue influence and interference with the formation or selection of a trade union);

- to recognize the employer's right to communicate to employees statements of fact or opinions reasonably held about the business, subject to the general prohibition mentioned above; and

- to prohibit an employer, a trade union or any person acting on their behalf to distribute printed material or engage in electioneering at the place of work or polling place on the day of a certification or decertification vote for the purpose of influencing the vote.

The objectives of other modifications, which will take effect on January 1, 1993, are as follows:

- to provide that an application to the Labour Board to settle the content of a first collective agreement may be made only after a conciliation officer has given notice (between 90 and 120 days after his/her appointment) that the parties have not been able to reach a settlement, or after 120 days have elapsed since that appointment;

- to permit the use of an arbitrator to settle the provisions of a first collective agreement where both parties agree;

- to expand the use of a secret ballot vote on applications for certification to situations when between 40% and 65% of the employees in the proposed bargaining unit have signed membership cards (the current range for automatic votes is between 45% and 55%);

- to require unions to provide information to concerned employees during certification drives with respect to initiation fees and regular membership dues; and to specify that the Labour Board will not accept the membership of an employee in the union as evidence during certification proceedings if the employee did not receive this information.

On June 4, 1992, the **Ontario** Minister of Labour tabled Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment. Following is a summary of the most important changes to the Labour Relations Act contained in the Bill.

In order to state explicitly the objectives of the Act, the Bill proposes:

- to add a purpose clause to the Labour Relations Act stating the objectives of the Act (e.g. to ensure that workers can freely exercise the right to organize, and to encourage the process of collective bargaining so as to enhance : (1) the ability of employees to negotiate improved terms and conditions of employment, (2) the extension of co-operative approaches between the parties in adapting to changes in the economy, developing work force skills and promoting workplace productivity, and (3) increased employee participation in the workplace).

In order to facilitate the process for the certification of trade unions, the Bill proposes:

- to remove the exclusion from the Act of domestics, certain categories of professionals and classes of agricultural or horticultural workers prescribed by regulation; and to eliminate the requirement for security guards to only join trade unions which represent security guards exclusively (at the request of either party, the Ontario Labour Relations Board (OLRB) would place security guards in a different bargaining unit than other employees if their monitoring duties would give rise to a conflict of interest);

- to provide for faster Board processes to deal with complaints arising from the disciplining or discharging of employees, or the imposition of other penalties, during organizing campaigns;

- to allow organizing activity on third-party property to which the public normally has access, but only at or near (but outside) the entrances and exits to a workplace (e.g. in front of a shop in a shopping center) (the OLRB could restrict such activity if it causes undue disruption);

- to eliminate the one dollar minimum membership fee that employees must pay on signing a membership card in order to be considered members of a trade union;

- to consider evidence of membership in a trade union only as of the date of application for certification;

- to modify the existing OLRB power to certify a trade union in order to remedy an unfair labour practice by removing the "adequate membership support" requirement (i.e. certification could be granted if the OLRB considers that the true wishes of the employees concerning representation by a trade union are not likely to be ascertained due to the unfair labour practice);

- to provide that the level of membership in a union required to make a representation vote mandatory be from 40% to 55% (currently from 45% to 55%);

- to require the OLRB to include full-time and part-time employees in the same bargaining unit in defined circumstances (this would not apply to craft units, or units in the construction industry) (the Board would separate full-time and part-time employees where there was insufficient support for certification in the combined unit);

- to give the OLRB the power to consolidate, at the request of either party, two or more bargaining units, if the same union represents separate groups employed by the same employer (the OLRB would notably take into consideration the advantages of stable collective bargaining and the potential for serious labour relations problems, and would be directed not to combine units if this would unduly interfere with the employer's ability to maintain significant operational or production differences between two or more geographically separate facilities) (an application for consolidation could be joined to an application for certification) (the construction industry would be exempted from this provision).

In order to correct perceived problems in the collective bargaining process, the Bill proposes:

- on application to the Minister by either the employer or trade union, to provide for the settlement of a first collective agreement by private arbitration where the parties have been in a legal strike/lockout position for 30 days or more, and have been unable to reach an agreement (any strike or lockout would then be terminated) (the current provisions for application to the Board for a direction to settle a first collective agreement by arbitration would be maintained);

- to prohibit an employer from using employees in the bargaining unit or replacement workers (except managers, other excluded persons, and employees not in the bargaining unit, who work at the place of operations and give their consent) to perform the work of striking or locked-out employees at the establishment affected by a labour dispute or the work of

managers and other excluded persons replacing these employees (employers would continue to have the right to shift work to another location); to make this legislation applicable to lockouts and legal strikes authorized by at least 60% of those in the bargaining unit who participated in a secret ballot; and to provide a number of exceptions to ensure the delivery of specified essential services and to prevent danger to life, health or safety, the destruction or serious deterioration of property or severe environmental damage;

- to require employers to continue employment benefits (including coverage under insurance plans, but excluding pension benefits) during a legal strike or lockout if the trade union makes payments sufficient to maintain them;

- to provide employees with just cause protection in cases of disciplinary action or dismissal following certification or voluntary recognition, under a collective agreement (subject to the right of the parties to agree to limit the application of this protection to probationary employees), or during a dispute to renew a collective agreement (until it is settled or the right of the union to represent the employees is terminated);

- to repeal the existing limitations on the right to return to work during a strike, and to provide that, if after a lockout or legal strike the parties do not reach an agreement on reinstatement, returning employees must be given priority for the positions they held when the work stoppage began, and that, if there is insufficient work for all these employees, they be reinstated as work becomes available according to seniority (as defined in recall provisions of a collective agreement if any) unless during the starting up of the employers' operations employees are not able to perform the work required;

- to permit individuals to picket on third-party property to which the public normally has access, during a lockout or legal strike, but only at or near (but outside) the entrances and exits to the operations at which the work of the struck or locking out employer is carried on (such union activity could be restricted by the OLRB if it causes undue disruption);

- to provide the OLRB with the power to settle one or more of the terms of a collective agreement when the existing duty to bargain in good faith has been violated and the Board considers that other remedies are insufficient;

- to require that every collective agreement contain a consultation provision if a party so requests during the negotiation period (such provision would provide that the parties consult regularly during the term of the agreement about pertinent workplace issues).

In order to increase protection for bargaining rights while a collective agreement is in force, the Bill proposes:

- to make the purchaser of a business party to any proceedings before the OLRB under any Act, that affect employees in the business or their bargaining agent, including bargaining notices, conciliation, mediation and OLRB proceedings;

- to extend the protection of bargaining rights and collective agreements to situations in which the sale of a business causes a transfer from federal to provincial jurisdiction;

- to protect bargaining rights and collective agreements for workers employed by a building owner or manager, or a contractor, to provide services on the premises (e.g. building cleaning, food services and security services) when the employer ceases, in whole or in part, to provide the services, and substantially similar services are subsequently provided at the premises under the direction of another employer (this would not apply to construction, production or manufacturing activities) (amendments to the Employment Standards Act would give employment rights to workers in these services when, without there being a sale of the business, their employer ceases to provide the services after June 4, 1992, and another employer begins to provide substantially similar services on the same premises).

In order to improve the administration and enforcement of the Labour Relations Act by the OLRB, the Bill proposes:

- to give the OLRB the power to issue orders on an interim basis on application in a pending or intended proceeding;

- to make the grievance arbitration process more effective and expeditious, notably by giving arbitrators additional procedural powers and ensuring that they can decide all issues before them;

- to provide that the parties may, at any time, agree to refer one or more grievances to a mediator-arbitrator, despite any provision included or deemed to be included in a collective agreement, for the purpose of resolving the grievances in an expeditious and informal manner.

In order to assist adjustment and change in the workplace, the Bill proposes:

- to enable the Minister of Labour to establish an advisory service whose purpose is to assist employers, trade unions and employees to respond to changes in the work force, in technology and the economy through co-operation and innovation;

- to create a statutory duty for employers to bargain in good faith with concerned unions towards a labour adjustment plan whenever an employer is giving notice of closure or termination of 50 or more employees (the OLRB would not have the power to determine an adjustment plan in case of failure to comply with this provision; a negotiated adjustment plan would be enforceable as if it were part of the collective agreement or, if no agreement is in effect, any difference relating to it could be referred to a single arbitrator at the request of either party); and to specify that the purposes of committees established under the Employment Standards Act in cases of termination of employment would be to consider alternatives to the terminations and to facilitate the adjustment process.

B. Public and Parapublic Sectors

In Saskatchewan, the Police Act, 1990 was proclaimed into force on January 1, 1992. It contains provisions dealing with collective bargaining for members of municipal or regional police services. These provisions bring changes with respect to referral of a dispute to arbitration, conciliation procedures and strike or lockout notice.

The Act stipulates that, if there is a dispute between a municipality, or a board of police commissioners it has established, and a local police association over the negotiation or revision of a collective bargaining agreement, and the parties have not agreed to refer to binding arbitration unsettled matters relating to hours and conditions of work, wages or employment, the minister responsible for the Human Resources, Labour and Employment Act may appoint a conciliator at the request of either party. When a conciliator is appointed, he/she must submit a written report to the parties within 30 days of the appointment, and no strike or lockout is permitted until the conciliator has done so.

Each party assumes an equal share of the cost of the chairperson of a board of arbitration or a conciliator and of any other general arbitration or conciliation costs. In addition, the Act requires that a party give the other at least 120 hours' written notice of a strike or lockout.

In **British Columbia**, effective July 31, 1992, the Compensation Fairness Repeal Act has repealed wage restraint legislation, applying to a broadly defined public sector, which had taken effect on January 30, 1991.

The Compensation Fairness Regulation adopted in the spring of 1991 under the Compensation Fairness Act has been repealed. This regulation could be made applicable to compensation plans in the public sector which were outside guidelines issued by the government.

In addition, British Columbia passed the University Amendment Act, 1992, which was brought into force on July 24, 1992.

Among other things, this Act removed from the University Act a section that prevented the Industrial Relations Act from applying to the employment relationship between a university and its faculty members.

In **New Brunswick**, the Expenditure Management Act, 1992 received royal assent on May 20, 1992. This Act applies to collective bargaining in the public sector (i.e. government departments, boards, commissions and agencies, public schools, hospitals, nursing homes and Crown corporations). The restraint measures it contains are in addition to the one-year wage freeze imposed by the Expenditure Management Act, 1991.

With respect to **expiring agreements**, the parties are free to return to normal collective bargaining, and the Act facilitates the giving of notice to bargain when the prescribed time limits have passed.

With respect to **continuing agreements**, the Act gives the bargaining agent three options:

(1) to give notice in writing to the employer that it wishes to extend the collective agreement for an additional two years and further delay unpaid negotiated improvements for that period and that it accepts wage increases of 1% to be provided in the first year following the wage freeze year imposed by the Expenditure Management Act, 1991 and 2% in the second year (all other terms of the agreement would remain unchanged);

(2) to agree with the employer to some other period of extension and/or some other delay in unpaid negotiated improvements and to other amendments to the collective agreement (changes in the extension period may require the approval of the Lieutenant-Governor in Council in specified circumstances);

(3) to give notice to bargain (all unpaid negotiated improvements would then cease to exist)(changes on which there is an agreement during the negotiations may be retroactive to any date after the end of the pay freeze imposed by the Expenditure Management Act, 1991).

If no notice is given by the bargaining agent with respect to one of the above options, the continuing agreement is extended on the terms set out in option 1.

During the two-year period following the wage freeze imposed by the Expenditure Management Act, 1991, wage increases for non-bargaining employees are subject to the approval of the Lieutenant Governor in Council as being generally consistent with the restraint measures applying to those who bargain collectively.

Additional payments resulting from promotion, reclassification or progression within an established pay range are permitted. The same applies to payments received under the Pay Equity Act.

Agencies which are funded by government departments to deliver services to the community on their behalf may, if they are obliged to provide excessive wage increases, request that an order in council be issued providing for a reduction of these increases. Such a request may be made no later than October 15, 1992.

The Act provides for similar restraint measures with respect to the New Brunswick Medical Society Agreement and the New Brunswick Pharmacists Association Agreement.

The Act came into force on May 28, 1992. It ceases to have effect on the expiry of the agreements and arrangements to which it applies.

In **Newfoundland**, the Public Sector Restraint Act, 1992 was enacted on June 11, 1992. It replaces the Public Sector Restraint Act which was adopted on April 18, 1991 and provided for a one year restraint period.

The Act applies to a broadly defined public sector, including the provincial government, Crown agencies, boards and commissions, Crown corporations, hospitals, school boards and post-secondary educational institutions, as well as Provincial Court judges, Ministers and members or employees of the House of Assembly. However, it does not apply to municipalities or cities.

The Act is considered to have come into force on March 31, 1991. It provides for a three-year restraint period beginning on the date of expiry of collective agreements or other contractual arrangements, or on the date of the first scheduled pay increase after March 31, 1991 or on the date negotiations to revise pay scales were scheduled to start after that date. No increase in compensation is permitted during the first 24 months of the restraint period, and a maximum increase of 3% is permitted for the last 12 months. It is possible for the parties to negotiate an increase with respect to components of the pay scales or other items of a collective agreement or other contractual arrangement, provided the direct or indirect cost to the government does not exceed during the restraint period the total cost of the expired collective agreement or arrangement (plus 3% during the last 12 months).

The restraint scheme does not affect payments required to be made under a pay equity agreement. However, notwithstanding any collective agreement, no pay equity agreement may contain a

provision which implements that agreement retroactively, and any such provision is considered to be void.

The pay scales of some groups of public sector employees (e.g. psychiatric therapy aides and ambulance dispatchers) are exempt from the restraint measures effective April 1, 1992.

Lastly, the Act provides that the Lieutenant-Governor in Council may set aside or modify arbitration awards that do not comply with the intent and purpose of the legislation.

In **Quebec**, An Act respecting the prolongation of collective agreements and the remuneration in the public sector was assented to and came into force on June 23, 1992.

This Act authorizes the public bodies (e.g. government departments and agencies, school boards, colleges, health establishments and certain crown corporations) and associations of employees to agree on a deferral of the date of expiry of their collective agreements, and allows the duration of such agreements to exceed three years. In cases where the parties fail to reach an agreement, the date of expiry is deferred for one year.

In addition, the Act prescribes the maximum increase in salary rates and scales and in premiums that may be agreed upon by the parties for the period of deferral. The rates, scales or premiums in effect on the date of expiry of a collective agreement may be increased by a maximum of three per cent for the first nine months following that date and one per cent at least for the three following months.

The provisions on the deferral for one year of the date of expiry of collective agreements when the parties fail to reach an agreement and on maximum increases during the extension period do not apply to a collective agreement which contains a stipulation having the effect of providing a salary increase for employees concerned that does not exceed the above-mentioned limits and is applicable for a period of a least one year beginning in 1992, 1993 or 1994. In addition, the Act specifies that these provisions do not apply to collective agreements binding certain parties such as Hydro Quebec and the Quebec Liquor Board (Société des alcools du Québec) and the unions representing their employees as well as the Government of Quebec and the Quebec Association of Provincial Police Officers (Association des policiers provinciaux du Québec).

The Act applies the maximum percentages of increase to administrators of state, chief executive officers and members of public bodies, managerial staff and other employees of these bodies who do not belong to a bargaining unit, and to judges and Members of the National Assembly.

Agreements relating to insured services provided by health professionals under the health insurance scheme are also subject to the maximum increases applicable to collective agreements.

At the **federal** level, Bill C-26, the Public Service Reform Act, which received second reading on February 24, 1992, provides, among other things, for various amendments to the Public Service Staff Relations Act. The most significant changes include those described below.

- A fair representation clause will be added to the Act. It will stipulate that no bargaining agent may act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the bargaining unit.

- In determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Public Service Staff Relations Board (PSSRB) will establish bargaining units coextensive with the classes, groups or subgroups established by the plan of classification for positions in the Public Service, unless any such unit would not permit satisfactory representation of the employees and for that reason would not be appropriate for collective bargaining.

- A new clause will provide that the employer and a bargaining agent may jointly elect to engage in collective bargaining with a view to the conclusion of a single collective agreement binding on two or more bargaining units. Such a decision will be irrevocable until the single collective agreement is entered into.

- In certain circumstances, when a request is presented by either party, the PSSRB will appoint a fact finder after the parties have been consulted. Negotiations between the parties may continue during the period of appointment of a fact finder, but the bargaining agent may not seek an alternate dispute resolution process (as outlined in the next point), and neither party may request arbitration or conciliation before the fact finder has submitted his/her report. The fact finder will confer with the parties, inquire into the matters in dispute, and make a report to the parties including any recommendations for the settlement of the dispute.

  A party will be required to provide the fact finder with any information directly relevant to the matters in dispute that he/she requests and that is in that party's possession.

  The report of the fact finder must be submitted within 30 days after the date of appointment or such other period agreed on by the parties. If the employer and the bargaining agent conclude a collective agreement within 15 days after they have received a copy of the fact finder's report (or within a longer period set by the PSSRB with the agreement of the parties), the report will not be made public. If an agreement is not reached, the PSSRB will make the report public.

- At any time during negotiations, a bargaining agent for which the process for resolution of a dispute is by the referral of the conflict to conciliation will be permitted to refer, if the employer approves, any term or condition of employment that may be included in a collective agreement to final and binding determination by whatever process the parties agree to. Such a decision will be irrevocable until the determination is made.

- Upon receiving a request for conciliation, the Chairperson of the PSSRB will appoint a conciliation commissioner if any conciliator has made a final report of his/her inability to assist the parties in reaching agreement, and both parties agree to such an appointment. However, the Chairperson may decide not to appoint a conciliation commissioner if, after consulting the parties, he/she is of the opinion that the appointment is unlikely to assist the parties in reaching agreement. Also, no conciliation commissioner will be appointed until the process of designating positions having duties necessary to the safety or security of the public is completed.

- Where the bargaining agent for a bargaining unit has chosen conciliation as its method of dispute resolution, the parties will meet and review the position of each employee in the bargaining unit to determine if it has safety or security duties. If the parties disagree on whether any positions have safety or security duties, the employer will, within prescribed

time limits, refer the positions in dispute to a designation review panel consisting of three persons (one representative of each party and a chairman selected by them or appointed by the PSSRB). The functions of the designation review panel will be to review only the positions in dispute and to make written non-binding recommendations to the parties as to whether these positions have safety or security duties.

If, after considering the recommendations of a designation review panel, the parties continue to disagree on whether any positions have safety or security duties, the employer will, within the prescribed limitation period, refer the positions in dispute to the PSSRB. The Board will review the positions in dispute and, after giving the parties an opportunity to make representations, will determine if they have safety or security duties.

A procedure will permit either party to notify the other in writing that they must meet and review any position to determine if it has, or does not have, safety or security duties. Such a review may only take place one year or more after a previous review under the Act.

- If a legal strike occurs (or may occur) during the period following the dissolution of Parliament for a general election and, in the opinion of the Governor in Council, it adversely affects (or would adversely affect) the national interest, he/she may delay any strike action until 21 days following the date fixed for the return of the writs.

C. Emergency Legislation

In the last 12 months, three ad hoc emergency laws were adopted in the **federal jurisdiction**.

The first of these laws, the Public Sector Compensation Act, was passed on October 2, 1991 to end a strike by various groups of federal government employees, and to provide for legislated wage restraint measures in the federal public sector.

The legislation applies to federal government departments, boards, commissions and agencies, designated Crown corporations, the Senate, House of Commons and Library of Parliament. It also applies to the staff of ministers and of members of the Senate and House of Commons as well as to the directors of designated Crown corporations, and members and officers of the Canadian Forces and of the Royal Canadian Mounted Police.

Compensation plans in effect on February 26, 1991 have been extended for 24 months. Compensation plans scheduled to expire before February 26, 1991 and not replaced by agreement of the parties before that date have been extended for 12 months with a retroactive increase in wage rates (4.2% or as authorized by the government) and, in addition, are subject to the 24-month extension mentioned above.

For the purposes of the Act, the term "compensation" does not include a lump sum payment of $500 to employees earning $27,000 or less a year, and an adjusted payment of less than $500 to employees earning between $27,000 and $27,500.

The parties to a collective agreement or the persons bound by an arbitral award, that includes a compensation plan extended by the Act, may agree in writing to amend any of its terms and conditions, other than wage rates or other terms and conditions of the compensation plan.

Every compensation plan covered by the 24-month extension is deemed to include a provision to the effect that there is no wage increase in the first twelve months and a three per cent increase in the second twelve month period.

There is an exception to the extension of a compensation plan, which expired before or was in effect on February 26, 1991, when a new compensation plan replacing it was established during the period beginning on February 26, 1991 and ending on October 2, 1991 (or a later date if the process for resolution of the dispute is by arbitration and a request to that effect was made prior to October 3, 1991). In these circumstances, the Governor in Council, on the recommendation of the Treasury Board, may adjust wage rates under the new compensation plan in a manner considered consistent with the wage policy of the Government of Canada arising from the February 26, 1991 budget.

As of the coming into force of the Act and for the duration of a compensation plan covered by it, it is prohibited for the employees to participate in a strike. In addition, certain actions or omissions of a bargaining agent and its officers and representatives leading to the declaration or continuation of a strike are prohibited.

Fines are provided for a contravention of the legislation by an employee (maximum: $1000), by an officer or representative of a bargaining agent (maximum: $50,000) or by a bargaining agent (maximum: $100,000). These fines are applicable to each day or part of a day during which the offence continues.

A term of imprisonment may not be imposed in default of payment of a fine by a person. Any fine imposed on a bargaining agent or one of its representatives or officers may be recovered by deducting it, in whole or in part, from the amount of membership dues that the employer deducts from the pay of the employees and remits to the appropriate bargaining agent.

A restraint scheme for 1992 and 1993, which is similar to the one applicable to compensation plans extended by the Act, applies to the salaries and allowances of the members of the Senate and the House of Commons.

The Act took effect on October 3, 1991.

The second ad hoc emergency law, the Thunder Bay Grain Handling Operations Act, which came into force on October 12, 1991, had the effect of ending a strike involving approximately 900 grain handlers employed at the Port of Thunder Bay, Ontario.

The legislation provided for the resumption of grain handling operations, and the appointment of a mediator-arbitrator to deal with all matters remaining in dispute between the parties. The term of the collective agreement was extended to include the period from February 1, 1991 to a date fixed by the mediator-arbitrator, which could not be earlier than January 31, 1993 or later than January 31, 1994.

Nothing in the legislation restricted the rights of the parties to agree to amend any provision of the collective agreement, other than a provision relating to its term.

Fines were provided for a contravention of the Act by an individual (maximum: $1000), by an officer or representative of one of the parties (maximum: $50,000) or by the employer or bargaining agent

(maximum: $100,000). These fines were applicable to each day or part of a day during which the offence continued.

The third law, the Postal Services Continuation Act, 1991, received royal assent on October 29, 1991.

This Act provided a mechanism for the settlement of a labour dispute between the Canada Post Corporation and the Canadian Union of Postal Workers (CUPW) representing approximately 45,000 employees, including mail sorters and handlers as well as letter carriers.

As of 6:00 a.m. on October 30, 1991, the legislation required the continuation or resumption of postal operations, and extended six collective agreements that had expired on July 31, 1989, and one that had expired on September 30, 1989, until July 31, 1993, except for a period during which CUPW declared rotating strikes.

The Act provided for the appointment of an arbitrator having the task of amalgamating the seven collective agreements into a single agreement. Other responsibilities included resolving the issues in dispute as well as determining the matters on which the parties had reached substantial agreement during the collective bargaining process, and incorporating such matters into the collective agreement.

Nothing in the legislation restricted the rights of the parties to agree to amend any provision of the collective agreement, other than a provision relating to its term.

Fines were provided for a contravention of the Act by an individual (maximum: $1000), by an officer or representative of one of the parties (maximum: $50,000) or by the employer or union (maximum: $100,000). These fines were applicable to each day or part of a day during which the offence continued.

Any fine imposed on the union or one of its representatives or officers could be recovered by deducting it, in whole or in part, from the amount of membership dues that the employer may be required to deduct from the pay of the employees and to remit to the union.

D. Construction Industry

Changes to the **Newfoundland** Labour Relations Act affecting more specifically the construction industry are outlined in Section A "Legislation of General Application".

In **Ontario**, effective December 19, 1991, the Labour Relations Amendment Act, 1991 has amended the Labour Relations Act to make changes with respect to the industrial, commercial and institutional sector of the construction industry as described below.

- The terms of province-wide agreements are increased from two to three years.

- When a vote is conducted to ratify a proposed province-wide agreement, the counting of the ballots is not allowed until the voting is completed throughout the province.

- A new section added to the Act gives the government the power to establish, by regulation, a corporation to facilitate collective bargaining in the industrial, commercial and institutional sector of the construction industry and to provide other assistance. The corporation does this notably by collecting, analyzing and disseminating information concerning collective bargaining and economic conditions in the sector, and by holding conferences involving representatives of the appropriate bargaining agencies. The membership of the corporation consists of an equal number of representatives of labour, management and the provincial government. The corporation is funded by labour and management.

In addition, on June 25, 1992, the Ontario Minister of Labour tabled Bill 80, An Act to amend the Labour Relations Act. The proposed amendments concern the relationship between local trade unions in the construction industry and their parent trade unions.

If a parent trade union holds bargaining rights within the jurisdiction of a local trade union (in a sector other than the industrial, commercial and institutional sector), the local trade union would be deemed to share the bargaining rights, and if the parent trade union is a party to a collective agreement, the local trade union would be considered a party to the agreement with respect to its jurisdiction. The Minister would have the power to require a parent trade union and its local trade unions to form a council of trade unions.

A parent trade union could not alter the jurisdiction of a local trade union without its consent. There would be provisions for the resolution of disputes about jurisdiction. Two or more local trade unions of the same parent trade union could agree to having the parent trade union resolve a difference concerning their jurisdiction, or an interested local trade union or employer could apply to the Ontario Labour Relations Board to resolve such a difference.

The above provisions would apply within the existing province-wide bargaining structures.

A parent trade union or council of trade unions would be prohibited from interfering with a local trade union without just cause. They would also be prohibited from penalizing local trade union officials without just cause.

It would be possible for local trade unions to become a successor to a parent trade union with its approval.

Local trade unions would be entitled to appoint at least a majority of trustees of employment benefit plans (exclusive of trustees appointed to represent employers).

In **Quebec**, An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry was assented to and came into force on June 23, 1992.

The Act contains measures which, among other things, have the following objectives:

- to clarify the notion of independent contractor and the provisions concerning the representative of a corporation or partnership who works on construction sites, and to specify certain powers of the Construction Commission (Commission de la construction);

- to increase certain fines, create new offences, and provide that in the event of a subsequent offence, certain offences entail, in addition to a fine, the suspension of the competency

certificate or the suspension of the right to obtain or renew a competency certificate, and that any person who hires the services of an employee whose competency certificate or whose right to obtain one has been suspended becomes liable to heavy fines;

- to extend joint liability to every building contractor and subcontractor as regards the payment of their employees' wages, and to provide that every prime contractor who makes agreement with a contractor who does not hold the licence required to perform construction work is jointly liable for the payment of the wages fixed by the Construction Decree.

In **Prince Edward Island**, the Minister of Labour tabled amendments to the Labour Act on March 24, 1992. Among other things, these proposed amendments provide that, when the government considers that the provisions of a collective agreement between an accredited employers' organization and a trade union in the construction industry have acquired a preponderant significance and importance for the establishment of labour conditions in a trade, it would have the power to extend by regulation the provisions of the collective agreement to designated construction projects in the sector and area covered by the accreditation order.

E. Artists and Producers

In the **federal jurisdiction**, the Status of the Artist Act was assented to on June 23, 1992.

While excluding persons holding employee status under Part I of the Canada Labour Code or the Public Service Staff Relations Act, Part II of the Status of the Artist Act establishes a framework for collective bargaining between professional artists, who are independent contractors working in the federal jurisdiction, and producers.

Part II of the Act creates a new administrative tribunal called the "Canadian Artists and Producers Professional Relations Tribunal" (CAPPRT). The CAPPRT is composed of a Chairperson, a Vice-chairperson and from two to four full-time or part-time members. Nominations to the CAPPRT are made on the recommendation of the Minister of Labour in consultation with the Minister of Communications.

The contents of Part II of the Status of the Artist Act include:

- giving artists' associations the possibility to apply to the CAPPRT for certification;

- providing for the determination by the CAPPRT of the sector(s) suitable for bargaining and of the representativity of artists' associations;

- giving the CAPPRT the power to certify artists' associations (a certified artists' association has exclusive authority to bargain on behalf of artists in a particular sector);

- authorizing the CAPPRT to revoke the certification of artists' associations in specified circumstances;

- providing that a certified artists' association or a producer may give notice to bargain and that they have the duty to bargain in good faith in order to enter into a scale agreement respecting minimum terms and conditions of engagement for artists;

- ensuring the final settlement, without pressure tactics, by arbitration or otherwise, of all differences between the parties or among artists bound by the scale agreement concerning its interpretation, application or an alleged contravention;

- specifying that, at the request of an artists' association, a scale agreement contain a compulsory check off provision applying to each artist subject to the agreement;

- enabling the Minister of Labour to appoint a mediator to help resolve collective bargaining disputes;

- permitting pressure tactics six months after the date of certification of an artists' association or 30 days after the expiry of a scale agreement, but not when such an agreement is in force; and

- prohibiting unfair practices by producers and certified artists' associations as well as giving the CAPPRT the power to hear complaints and issue remedial orders.

The Act will come into force on a date or dates to be fixed by the government.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Proclamation

In New Brunswick, An Act to amend the Occupational Health and Safety Commission Act, adopted in May 1991, was proclaimed into force on August 29, 1991. This Act changes the composition of the Occupational Health and Safety Commission. Its membership is increased from seven to nine. Four persons must be representative of employers, four of workers, and one person not representative of either group is appointed as chairperson. The maximum term of office of the chairperson is reduced from ten to six years and the maximum terms of office for the members are repealed. The quorum at Commission meetings is a majority of its members, provided that at least one member representative of employers and workers as well as the chairperson or vice-chairperson are present. The chairman of the Workers' Compensation Board continues to be an ex officio member of the Commission, but in addition has the function of vice-chairperson of the Commission.

B. Legislation of General Application

The federal government amended the fee schedule of the Hazardous Materials Information Review Regulations under the Hazardous Materials Information Review Act, which are part of the Workplace Hazardous Materials Information System (WHMIS). Changes are made by this regulation to the fees and the manner of calculating fees that are payable with respect to a claim for exemption from disclosure of confidential business information or for an appeal of a decision or an order of a screening officer employed by the Hazardous Materials Information Review Commission.

The new fee structure under this regulation ensures the achievement of full cost-recovery in the operations of the Hazardous Materials Information Review Commission. The fee structure consists of a base fee of $2 000 per claim and a supplementary fee of $400 for each hazardous ingredient requiring a separate material safety data sheet. The amount of the base fee per claim varies with the number of claims being grouped for fee purposes. Where a subsequent claim for exemption is filed, the base fee payable for the existing claim or claims is not charged; however, the fee for each additional ingredient is imposed. The regulation also provides an additional fee structure at a lower level for the filing of a subsequent claim for exemption.

A 50 per cent reduction of fees is provided to small businesses, defined as businesses with a gross annual revenue of not more than three million dollars that do not employ more than 100 employees.

The fee generally required to accompany a statement of appeal is $2 000. However, it is of $1 000 where the appeal is filed by an individual employee, in certain circumstances, or by a small business.

Alberta adopted a new Codes and Procedures Regulation under the Elevator and Fixed Conveyances Act, which came into force on July 1, 1992. It applies to such devices as freight elevators, belt lift type manlifts, freight platform lifts, power type manlifts, and personnel hoists.

New Brunswick adopted a new General Regulation under the Occupational Health and Safety Act. This regulation, which became effective March 1, 1992, completes the review of N.B. Reg. 77-1 undertaken earlier with the publication of N.B. Reg. 89-66. Accordingly, this regulation repeals and replaces N.B. Reg. 77-1 and 89-66, as well as that part of the Mining Regulation under the Mining

Act dealing with pits and quarries. Regulation 89-66, however, is reproduced almost integrally in the new regulation.

The purpose of this regulation is to change the wording of the occupational health and safety regulation to make clear where the onus lies in each case where rights or obligations are created. This should also simplify the enforcement of the provisions.

To achieve the goal of making occupational health and safety a priority in every workplace or work site, the employer is required to develop a Code of Practice before performing any dangerous work. This should provide for better planning of the work and the methods used, a more effective assignment of tasks, and the preparation of those involved to react to the worst-case scenario.

Other salient aspects of the regulation include the following: increased use of references to ACGIH, ANSI, ASHRAE, CSA and similar standards; comprehensive provisions respecting work in confined spaces which require, among other things, training of employees and posting of rescuers at the entrance of the confined space; a prohibition from using electrical means of initiation when blasting within 1000 meters of a power-line, and a shift to safer blasting techniques; new requirements respecting the use of seat-belts and the installation of roll over protective structures on powered mobile equipment and falling object protective structures on industrial lift-trucks; clearer requirements respecting lock-out of machinery and machine guarding; and new provisions concerning arboricultural operations (for example, the trimming of trees) around power-lines in urban areas.

The **Northwest Territories** adopted an Amendment to the General Safety Regulations under the Safety Act respecting first aid. The new first aid requirements, which came into force on April 24, 1992, are contained in Schedule C of the regulations.

On February 28, 1992, the Northwest Territories adopted the Hours of Service Regulations under the Motor Vehicles Act. The regulations establish limitations of driving time and duty time for motor vehicle operators, requirements for off duty time and the keeping of daily logs, as well as conditions for extension of hours, permits and the power of an officer to declare a driver to be off duty and impose an off duty period. Where these provisions conflict with a provision of the Labour Standards Act or its regulations, that provision prevails over the provisions of this regulation.

Nova Scotia adopted the Temporary Workplace Traffic Control Regulations under the Occupational Health and Safety Act. These regulations provide that no work may be undertaken at a temporary workplace on or near a public highway unless a Code of practice to ensure the safety of operations has been adopted and implemented by the employer or constructor.

Nova Scotia also adopted An Act to Implement Arrangements Made Between the Province and the Government of Canada to Provide Uniformity in the Laws Relating to Petroleum Resources in the Offshore. This Act, which amends Chapters 3, 8 and 10 of the Statutes of Nova Scotia of 1987, adds to those Acts, among other things, clear references to the promotion of safety, particularly by encouraging persons exploring for and exploiting petroleum to maintain a prudent regime for achieving safety. The Act was assented to June 30, 1992.

Manitoba adopted a new Power Engineers Regulation under the Power Engineers Act, which became effective March 2, 1992.

Saskatchewan's Minister of Labour, the Honourable Bob Mitchell, recently introduced Bill 89, An Act to amend the Occupational Health and Safety Act. This Act would provide for the nomination of an occupational health and safety representative in establishments of less than 10 employees, and allow the Lieutenant-Governor in Council to require, by regulation, the establishment of a joint occupational health and safety committee in these establishments. Actions arising out of this Act could no longer be brought before the ordinary courts, and would be referred to a tribunal created pursuant to the adoption of a regulation. The Act would generally make more effective the exercise of certain substantive rights of workers under the Act, such as the right to refuse and the right to participate. For example, where the right to refuse has been exercised, the employer would be required to inform any other employee assigned to perform the task of the reasons for which a co-worker has refused to perform it. The Act would confer to health and safety officers (and to the director of health and safety) certain new powers, including forwarding notices of contravention to the Workers' Compensation Board, issuing stop-work orders in certain circumstances, and requiring an employer to cease any discriminatory action against a worker. For example, where a worker has been dismissed for a proscribed motive, the officer would be empowered to order the employer to reinstate the worker and pay any wages he or she would have earned. An officer would also be empowered to order the removal of any reprimand or other reference to the matter from employment records. In addition, the amount of fines which may be imposed for offences to the Act would be increased.

C. Chemical and Biological Agents

Newfoundland adopted the Asbestos Abatement Code of Practice under the Occupational Health and Safety Act, on October 4, 1991. The Code of Practice has been developed to provide safe handling procedures to minimize exposure to airborne asbestos fibres released from material containing asbestos.

The Code applies to every workplace covered by the occupational health and safety legislation where asbestos or material containing asbestos is likely to be handled, dealt with, disturbed or removed, including every project, project owner, contractor, employer and employee involved, and operations involving a risk of exposure to airborne asbestos fibres. It also applies to every building in which material that contains asbestos has been used and to the owner.

The provisions of the Code deal with the following topics: prohibitions with respect to the use of asbestos, threshold limit values, registration of contractors, worker training, information to provide to the Occupational Health and Safety Division of the Department of Employment and Labour Relations before starting work, identification of asbestos containing material, assessment of the workplace, asbestos management plan, preparation of the work area, removal procedure, encapsulation and enclosure, air monitoring of the workplace, respiratory equipment, personal protective equipment, personal hygiene, decontamination, cleanup, transport and disposal of asbestos, precautions to be taken by every owner/contractor, medical monitoring, and an owner/contractor's obligation to keep employee records.

Similarly, the Northwest Territories adopted the Asbestos Safety Regulations under the Safety Act. These regulations put a ban on the use crocidolite minerals in any asbestos process, and on the application of asbestos by spraying.

Several safety measures must be taken by employers conducting an asbestos process. These include: providing exposed workers with approved respiratory equipment, dustproof coveralls, gauntlets, eye protection, and headgear; operating, at all times during the process, ventilation and air filtering equipment and removing asbestos dust from the air; enclosing the work area, or if this is not practicable, in the opinion of a safety officer, ensuring that any asbestos surface is kept wet as it is being disturbed; ensuring that, before the asbestos surface is disturbed, the asbestos is soaked with water through its entire thickness; posting warning signs; cleaning the work area thoroughly each day by vacuuming or by a wet cleaning method approved by a safety officer; and ensuring that all asbestos materials, debris and dust are placed in sealed, airtight containers and clearly labelled "ASBESTOS".

An employer must provide exposed workers with training with respect to the proper use of protective equipment, handling, removal and proper disposal of asbestos waste, as well as health education including information on asbestos-related illnesses, and any other information a safety officer considers necessary.

The ventilation and air filtering equipment must be inspected and cleaned each week. Repairs must be made within 30 days of the receipt of a report to the employer by a person in the workplace designated by a safety officer to inspect and report to the employer on the condition of the equipment and the need for repair.

No person under the age of 19 can be employed where an asbestos process is conducted unless the process is being conducted under constant supervision and has been inspected and approved by a safety officer.

Finally, these regulations provide that the employer must make arrangements for, and pay the full cost of, medical examinations of workers involved in an asbestos process within 30 days following the request of such workers. The examinations must include a complete physical examination with special attention to the respiratory system, lung function tests including vital capacity and forced expiratory volume at one second, and any medical procedures considered necessary by the examining physician for the diagnosis of asbestos-related illnesses. These regulations came into force on March 27, 1992.

The Northwest Territories also adopted the Silica Sandblasting Safety Regulations under the Safety Act. These regulations provide that an employer conducting a silica process must ensure that certain safety measures are taken to protect the health of the workers who may be exposed to silica dust.

Where an employer cannot control the emission of silica dust in the air through engineering means, such as enclosing the work area, maintaining ventilation and air filtering equipment, or maintaining a jet or stream of water or other liquid on the work surface, the employer must provide each worker with appropriate respiratory equipment and dustproof coveralls, gauntlets, eye protection and headgear. The regulations establish provisions for the training of workers in safety measures, and require the regular cleaning and maintenance of work areas and of engineering control mechanisms. The regulations prohibit the use of uncombined silica in a silica process, and encourages the substitution of silica flour with a less hazardous substance, with the approval of a safety officer. The regulations require the registration of persons conducting sandblasting operations with the Chief Safety Officer.

In addition, the regulations prohibit the employment of persons under 19 years of age in an area where a silica process is being conducted unless the process is conducted under constant supervision and the process used has been inspected and approved by a safety officer.

Finally, these regulations provide that the employer must make arrangements for, and pay the full cost of, medical examinations of workers involved in a silica process within 30 days following the request of such workers. The examinations must include a complete physical examination with special attention to the respiratory system, lung function tests including vital capacity and forced expiratory volume at one second, and any medical procedures considered necessary by the examining physician for the diagnosis of silica-related illness. These regulations came into force on March 27, 1992

On October 26, 1991, the **Ontario** Minister of Labour announced a review of specific Occupational Exposure Limits listed in the Regulation respecting Control of Exposure to Biological or Chemical Agents, O. Reg. 654/86, and specified in certain designated substances regulations under the Occupational Health and Safety Act. The review would concern chemicals for which Ontario values are higher than some other jurisdictions, for example, asbestos, benzene, lead, PCBs, and vinyl chloride. On August 4, 1992, proposed changes to the Occupational Exposure Limits of 101 substances were published in the *Ontario Gazette*. A total of 235 substances will eventually be covered in the review conducted by the Task Force of the Joint Steering Committee established following the October 26, 1991 announcement.

D. Mining Safety

On November 2, 1991, **Ontario** amended its Mines and Mining Plants Regulation under the Occupational Health and Safety Act. The amendments are very diverse in nature and range from reducing the concentration of toxic substances in diesel exhaust emissions, to the control of radon gas and its derivatives, to rescue methods and first aid equipment in mines and mining plants. In addition, many of the provisions have been amended to make reference to more recent CSA standards.

The same regulation was amended again on April 11, 1992, to establish new requirements respecting drilling and sampling within proximity of blasting holes or explosives in mines.

Quebec pre-published a draft Regulation respecting occupational health and safety in mines in the Gazette officielle du Québec of November 13, 1991. This regulation, which contains more than 500 sections, would amend, repeal and/or replace the Regulation respecting the salubrity and safety of workmen in mines and quarries, the Regulation respecting mine rescue stations, the Regulation respecting the quality of the work environment, as well as any provision of any regulation under the Act respecting occupational health and safety which applies to mines and which may be incompatible with the provisions of this regulation. This regulation deals with various issues, such as those concerning the obligations of an employer, personal protective equipment, the minimum age of workers, first aid, the physical organization and the quality of the work environment, safety measures to prevent events that could result in mining disasters, motorized vehicles, the handling and use of explosives, and hazards associated with electricity. It is possible that this regulation may come into force in the fall of 1992.

E. Noise Protection

The federal government amended Part VII, "Levels of Sound", of the Canada Occupational Safety and Health Regulations under the Canada Labour Code. The new regulation prescribes lower maximum permissible levels of sound to which an employee can be exposed in the workplace, as well as shorter duration of this exposure. Whereas the maximum permissible level of exposure had been previously set at 90 decibels for 8 hours in any 24 hour period, this has been reduced to 87 dBA. A schedule to the regulation outlines the maximum A-weighted sound pressure levels permissible per duration of exposure in any given period. In addition, hazard investigations must be conducted wherever exposure levels are of 84 dBA or greater for a duration that is likely to endanger an employee's hearing. If the report states that an employee is likely to be exposed to high levels of sound as specified, the employer must post a copy in a conspicuous place in the work place and provide any employee affected with information respecting the hazards associated with this exposure. The regulation provides that, as far as is practicable to do so, engineering controls other than hearing protectors must be applied by the employer to reduce exposure of every employee in the workplace that is or is likely to be exposed to levels of sound in excess of the prescribed limits. Where there is no reasonable alternative but to provide employees with hearing protectors, the employer must file a report setting out the reasons why it is so with the regional safety officer and give a copy of this report to the safety and health committee or the representative, if any. Hearing protectors must also be used by persons, other than employees, having access to the workplace where they are likely to be exposed to a sound level exceeding the prescribed limits. The hearing protectors must meet the requirements of CSA Standard Z94.2-M1984 "Hearing Protectors", as amended from time to time. Moreover, the employer, in consultation with any safety and health committee or representative, must formulate a program to train employees who have been provided with hearing protectors in the fit, care and use of such devices. Signs must be posted in conspicuous locations warning of a potentially hazardous level of sound in the workplace, where exposure may exceed 87 dBA. Operators of "large trucks" have been excluded from this regulation pending the results of a study to determine the levels and the duration of exposure to sound of these operators. In the interim, the maximum permissible levels of exposure for these operators will remain the same as in the previous Part VII of the Canada OSH Regulations, which are referenced in Schedule II of this regulation.

F. Radiation Protection

New Brunswick adopted a new X-Ray Equipment Regulation under the Radiological Health Protection Act. This regulation establishes, among other things, the dose limits to radiation from X-ray equipment for both X-ray workers and other employees and persons. In this respect, the regulation clearly puts the onus on the owner of the equipment to control the use of the X-ray equipment so that no radiation worker is exposed to annual dose limits in excess of 20 mSv on the whole body, and no person, other than radiation workers, is exposed to annual dose limits in excess of 1 mSv (reduced from 5 mSv). Other dose limits are specified as they relate to specific body parts, and to the level of exposure at which a medical examination is required. The regulation also provides special provisions for a radiation worker who becomes pregnant, for the duration of the pregnancy.

The regulation specifies other owner responsibilities, such as ensuring that the equipment is properly shielded, so that the maximum annual dosage requirements are respected, and to clearly designate which employees are radiation workers and which are not. The owner must ensure that radiation

workers are trained in the proper use of the equipment, and are members of one of recognized professional associations, such as the Canadian Association of Radiation Technologists. Except in specified circumstances, no person under the age of 18 can be employed as an X-ray radiation worker.

The regulation makes references to a number of Safety Codes respecting the operation of radiation equipment that are published under the authority of the Minister of National Health and Welfare (Canada). It is also the first Canadian regulation to incorporate references to standards established by the International Commission on Radiation Protection. This regulation came into force on March 1, 1992.

G. Fire Protection

Ontario adopted the Fire Marshals Amendment Act, 1991. This Act amends the Fire Marshals Act in ways relevant to occupational health and safety. Among other things, the Act provides authorization to establish fire protection teams in territories without municipal organization. The Act also provides increased powers for the Fire Marshal, such as authorizing the Fire Marshal or an officer to enter land, without warrant, for the purpose of removing or reducing an immediate threat to life. In addition, the Act makes clear that the fire code, which does not apply to buildings under construction, is inapplicable only to the unoccupied parts of such a building. This Act came into force on November 25, 1991.

Alberta adopted the Alberta Fire Code Regulation, 1992 under the Fire Prevention Act. This regulation provides for the coming into force, on August 31, 1992, of the Code.

Human Resources and Labour
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Highlights of Major Developments in Labour Legislation

1992 - 1993

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HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

September 1, 1992 to July 31, 1993

I. EMPLOYMENT STANDARDS

A. Proclamations

Newfoundland proclaimed in force the provisions of the Act to Amend the Labour Standards Act, described in last year's issue of the *Highlights of Major Developments in Labour Legislation* , that replaced the Labour Standards Tribunal with a system of single arbitrators, effective April 15, 1993. The other provisions of that Act had come into force on June 11, 1992.

As reported in last year's *Highlights of Major Developments in Labour Legislation*, the **Yukon** had given royal assent, on June 2, 1992, to Bill 13, An Act to Amend the Employment Standards Act. However, the Bill was not proclaimed in force prior to a change of government in October 1992. The new government announced it will not be proclaiming Bill 13, but will be reviewing its contents and considering possible future amendments to the Employment Standards Act. In the meantime, the provisions of Bill 13 respecting its coming into force are amended by Bill 83 to ensure that no provision of the Bill will come into force on its own and would be proclaimed by the Commissioner in Executive Council.

B. Legislation of General Application

The **federal** government proclaimed in force on June 23, 1993, Bill C-101, An Act to amend the Canada Labour Code and the Public Service Staff Relations Act (S.C. 1993, ch. 42). The following is a description of the provisions of general application respecting labour standards contained in this Act.

Modifications to certain labour standards where the parties agree

- The procedure for modifying hours of work or substituting general holidays by ministerial permit has been streamlined. Where employees are covered by a collective agreement, the procedure simply requires a written agreement between the employer and the trade union. With respect to employees who are not subject to a collective agreement, modification of the hours of work or substitution of a general holiday requires approval by at least 70 percent of the affected employees and the posting of a notice for 30 days before the change takes effect. Any employee affected by the change may request that a secret vote monitored by an inspector be conducted to verify whether the 70 percent approval was obtained.

Application of collective agreements to prevail

- Where a collective agreement meets or exceeds the requirements of the Canada Labour Code with respect to annual vacations, general holidays, bereavement leave and minimum wages, the parties are exempted from the corresponding provisions of the Code. Only employees who have access to the grievance process are limited to obtaining redress through that process and would not have access to the complaint mechanism under the Code.

Parental leave

- The Act allows the parental leave period of 24 weeks to be taken at any time within 52 weeks following the birth or adoption of the child, or its coming into the parent's care and custody for the first time. This makes the parental leave provisions of the Code more consistent with the provisions of the Unemployment Insurance Act.

Reassignment of a pregnant or nursing employee

- Part III of the Code previously allowed an employer to unilaterally require a pregnant employee to take a leave of absence if she became unable to perform part of her job. In some cases, this forced pregnant or nursing employees to quit their job if certain parts of it posed a temporary danger to herself or to her unborn or breast-feeding child, unless the employee qualified for and had accumulated sufficient sick or vacation leave, or could begin her maternity leave. The Code was amended to provide a better balance between employers' and employees' rights and allow a pregnant or nursing employee to request, if her request is accompanied by a medical certificate, modifications to her job or a reassignment to other duties to avoid risks to her health, or that of her child. The employer is required to make every reasonable attempt to accede to the request. If reassignment is not reasonably practicable, or if the employee is unable to work at all, she has the right to an unpaid leave of absence, for the duration of the risk's existence from the beginning of the pregnancy until the end of the 24th week following the birth.

Injured worker protection

- The Code provides wage protection and return-to-work guarantees for workers who are absent due to work-related illness or injury. Employers are required to: a) provide replacement wages equal to the rate of workers' compensation in the province or territory where the employee resides; b) continue benefits and seniority during the period of the absence; and c) return the employee to work where reasonably practicable for a period of time to be defined by regulation.

Miscellaneous amendments

- Several amendments make the French and English texts of the Canada Labour Code consistent, and ensure clarity and uniformity.

This Act also contains provisions requiring a directed vote of an employer's last offer, described in Part II of this document, as well as recovery of unpaid wages provisions, which are described in Section E below.

British Columbia recently adopted the Employment Standards Amendment Act, 1993. This Act amends the Employment Standards Act to, among other things, remove the provisions permitting that certain rights contained in a collective agreement not meet the minimum criteria set out by the Act, provided that other rights in the agreement meet or exceed, when considered together, those of the Act. The amendments provide that an employee who accepts severance pay (i.e. pay in lieu of notice) is deemed to lose his or her recall rights, and that an employee terminated as part of a group must receive both the individual and group

notice of termination or the severance pay. In addition, where an employee is still employed after the expiry of the notice period, the termination has no effect. The amendments respecting termination of employment are deemed to have come into force retroactively to June 28, 1993. All other provisions, except those making reference to the new Labour Relations Code and coming into force by proclamation, will take effect on January 1, 1994.

C. Minimum Wages

British Columbia increased its minimum wage rates, effective April 1, 1993. The minimum wage rate payable to a person aged 18 and over has been increased from $5.50 to $6.00 an hour. The rate payable to persons under age 18 has been increased from $5.00 to $5.50 an hour. Live-in homemakers, as well as domestics, farm workers or horticultural workers paid on a basis other than on an hourly or piece work must be paid at least $48 for each day or part of a day worked. Resident caretakers of an apartment building of nine to 60 units must be paid at least $360 per month plus $14.40 for each unit. Residential caretakers of apartment buildings of more than 60 units must be paid at least $1,224 per month. This regulation also establishes new rates for farm workers who are employed on a piece work basis to hand harvest certain fruit, vegetable, or berry crops which are based on gross volume or weight picked.

Nova Scotia increased the minimum wage rates for various categories of workers, effective January 1, 1993. The general minimum wage rate increased from $5.00 to $5.15 an hour. The rate for inexperienced employees (i.e. those who have not worked in that kind of employment for three months or more) increased from $4.55 to $4.70 an hour. The minimum wage rate for persons under 18 years of age was repealed.

The maximum deductions for board and lodging were established at $47.25 per week; for board only, $38.20 per week; for lodging only, $10.65 per week; and $2.45 for single meals. The overtime wage remained at least one and one-half times the applicable minimum wage rate, usually payable after 48 hours in a week. Other parts of the previous general minimum wage order have largely remained unchanged.

The minimum wage rate payable to persons engaged in road building and heavy construction work was also set at $5.15 an hour. Overtime became payable after 96 hours in a two-week period, and is also at least one and one-half times the minimum rate.

The minimum wage rate payable to workers employed in a logging or forest operation was raised to $5.15 an hour for time workers, and $1,005.00 per month for persons who have no fixed work week or whose hours of work are unverifiable (such as camp, gate and dam guardians, cooks and kitchen employees, stable hands, watch employees, fire rangers and wardens). The maximum deductions for board and lodging for these categories of workers was set at $7.55 per day. No employer can charge for board and lodging that the employee does not receive.

Ontario has raised its minimum wage rates in accordance with the announcement reported in last year's issue of the *Highlights of Major Developments in Labour Legislation*. A regulation amending the General Regulation under the Employment Standards Act became effective November 1, 1992. The general rate has been increased from $6.00 to $6.35 an hour. This

represents a 5.8 per cent increase that matches the rise in the average wage and maintains the minimum wage at about 51 per cent of the average wage. In order to support two hard-hit sectors, the hospitality and retail sectors, the wage differential for students was retained and the minimum wage for liquor servers was frozen at $5.50 an hour. The student minimum wage was increased by 35 cents, to $5.90 an hour. The room and meal deductions were increased by the same percentage increase in the general minimum wage. Effective January 1, 1993, harvest workers became entitled to the minimum wage of $6.35 an hour, and hunting and fishing guides received the same percentage increase in their daily and half-day rates. Ontario's Minister of Labour, the Honourable Bob Mackenzie, announced on July 30, 1993, that the general minimum wage will be raised by 5.5 percent to $6.70 per hour, effective January 1, 1994. The rate payable to students under 18 employed for not more than 28 hours a week or during a school holiday will be raised to $6.25, whereas employees serving alcoholic beverages will be entitled to $5.80 per hour. It is expected that Ontario will increase the general minimum wage to a level representing 60 percent of the average wage in at least two stages between now and 1995, when the government will begin implementing its reform of the social assistance system.

Subsequent to the adoption of the Employment Standards Act last year, **Prince Edward Island** re-enacted the general minimum wage rate of $4.75 an hour and the rates that may be deducted for board and lodging, while repealing the youth wage, effective January 1, 1993. This change results from the fact that the new Act makes no provision for a different minimum wage rate for persons under 18 years of age.

Quebec increased its minimum wage rates, effective October 1, 1992. The general rate increased from $5.55 to $5.70 per hour. The rate payable to those who earn gratuities increased from $4.83 to $5.00 per hour. Live-in domestic workers became entitled to $221 per week, up from $215. The maximum amounts an employer may charge for room and board were raised as follows:

- $1.25 per meal, to a maximum of $16.78 per week;
- $16.78 per week for a room;
- $33.56 per week for both room and board.

Quebec has published a draft regulation announcing its intention to amend the minimum wage provisions of the Regulation respecting labour standards, effective October 1, 1993. The general minimum wage will increase to $5.85 per hour. The rate payable to employees who usually receive gratuities will increase from $5.00 to $5.13 per hour and that payable to domestic workers who reside in their employer's home will increase from $221 to $227 per week, effective on the same date.

Saskatchewan increased its general minimum wage rate from $5.00 to $5.35 per hour, effective December 1, 1992. The minimum call-in pay, payable to employees who report for duty at the call of their employer, whether or not they remain on duty for three hours on that occasion, increased from $15.00 to $16.05.

D. Sunday Shopping

Manitoba introduced a Bill which has further liberalized Sunday shopping in Manitoba, on a trial basis. Bill 4, the Retail Businesses Sunday Shopping (Temporary Amendments) Act allowed retail establishments which normally operate with more than four employees to open on Sundays between noon and 6:00 p.m., from November 29, 1992 to April 5, 1993. Employees of these establishments were given the right to refuse to work on Sundays if they exercised this right at the outset of the trial period or 14 days prior to being assigned work on a Sunday. Establishments which normally operate with no more than four employees continued to benefit from the exemption which removes closing restrictions under the Retail Businesses Holiday Closing Act. At the end of this trial period, the government assessed the situation and introduced another Bill to extend the trial period from April 13, 1993 until September 30, 1993, at the same conditions provided under Bill 4. Bill 23 would also, after September 30, 1993, enable municipalities to adopt by-laws regulating Sunday shopping in their communities.

Pursuant to amendments last year to the Days of Rest Act, **New Brunswick** adopted a amendments to New Brunswick Regulation 85-149 under that Act to provide new exemptions from the requirement that establishments be closed on Sundays. Previously, the regulation permitted to carry on business on Sundays from the beginning of November to the Sunday preceding Christmas and the activities that were exempt for the purposes of the weekly rest day were somewhat more limited. The exemptions, which enable establishments to be open for business from the first Sunday after Labour Day to the Sunday immediately preceding Christmas Day, excluding Remembrance Day if it falls on a Sunday, now cover most types of retail establishments (as specified in Schedule A of the Regulation) as well as the sale of liquor by persons appointed as agents under section 40.1(1) of the Liquor Control Act. This regulation also prescribes the criteria the Minister is to take into consideration when reviewing an application under subsection 7.2(1) of the Act with respect to the issuance of an exemption permit for a festival or other special event. Further amendments to the list of exemptions and the criteria for the granting of exemptions have also been adopted in the course of the last year.

Prince Edward Island adopted the Retail Businesses Holidays Act, which repealed and replaced the Day of Rest Act. The Act permits retail business establishments to be open on Sundays, from the last Sunday in November to the Sunday preceding Christmas. The Act sets out the principle that retail business is prohibited on a holiday (which include Sundays, except during the period mentioned above). However, certain activities are excluded from the prohibition. The Act also allows retail businesses to be open on Sundays if the person operating the establishment, on grounds of conscience or religion, observes another day without labour and closes the establishment on that other day each week. This Act came into force on November 14, 1992.

Quebec adopted An Act to amend the Act respecting hours and days of admission to commercial establishments. This Act, which came into force on December 18, 1992, effects a liberalization of the opening hours of commercial establishments. The Act provides that members of the public may generally be admitted to commercial establishments between 8:00 a.m. and 5:00 p.m. on Saturdays and Sundays, and 8:00 a.m. and 9:00 p.m. on the other days of the week. The only restrictions pertain to the obligation to close establishments on specified holidays, which remain largely unchanged. (The holiday celebrated on Easter

Monday is repealed and replaced by Easter Sunday.) In addition, the public may be admitted to a commercial establishment only between the hours of 8:00 a.m. and 5:00 p.m. on December 24 and 31, and between 1:00 p.m. and 5:00 p.m. on December 26 where it falls on a Saturday or Sunday, or 1:00 p.m. and 9:00 p.m., where it falls on another day of the week. The Act has maintained most of the exceptions previously in force, but alters the application of some of them. Moreover, the Act provides that for a period of three years, a person operating a commercial establishment is prohibited from imposing sanctions on persons employed by him at the time of the coming into force of this Act because they have refused to work on Sundays or during the additional hours of admission established by this Act (i.e. from 7:00 p.m. to 9:00 p.m. on Mondays and Tuesdays).

E. Recovery of Unpaid Wages

Ontario amended the Employee Wage Protection Program in order to include amounts deemed to be wages under section 56.10 (4) of the Employment Standards Act. Amounts determined to be owed by successor employers, who have failed to make a reasonable job offer to a person to whom such an offer should have been made, have been included among additional payments for the purposes of compensation under the program.

Bill C-101, An Act to amend the Canada Labour Code and the Public Service Staff Relations Act provides a new **federal** wage recovery system for the administrative enforcement of the pecuniary obligations of an employer set out in the Code. Where an inspector finds that an employer has not paid an employee wages or other amounts to which the employee is entitled, the inspector is empowered to issue a written payment order to the employer, or in certain circumstances to a director of a corporation or a cooperative, ordering the payment of the amounts due. Any person affected by the order may appeal it within 15 days, by letter addressed to the Minister. The Minister is required to appoint a referee to hear and dispose of the appeal. The decision of the referee is final and binding. The decision of the inspector or, where there was an appeal, of the referee, can be filed in the Federal Court and become enforceable as a judgement of that court. A regional director is empowered to issue third party demands against a person or a financial institution who may owe money to the defaulting employer. The demand would order that person or institution to pay any amount, up to the amount stated in the payment order, directly to the Minister within 15 days. Directors of corporations and cooperatives become jointly and severally liable for wages and other amounts due to employees to a maximum equivalent to six months' wages if the entitlement arose during the time of the directors' incumbency and the recovery of the amount from the corporation or cooperative is impossible or unlikely. Any amounts recovered through the application of these provisions of the Code must be deposited to the credit of the Receiver General in the "Labour Standards Suspense Account" or in another special account created for this purpose, from which the Minister can authorize the payment of amounts due to any unpaid employee.

F. Pay Equity

Ontario adopted An Act to amend the Pay Equity Act. This Act was first introduced on December 18, 1991 as Bill 168 during the 1st Session of this Legislature. The Bill had been continued as Bill 102 of the 2nd Session. Excepting the change in the deadlines for achieving pay equity, Bill 102 has remained essentially unchanged from the previous version.

The Act establishes two additional methods of determining whether pay equity exists for a female job class, the proportional value method and the proxy method. The Act contains an extensive description of what proxy comparisons are, and how they should be utilized.

The proportional value method permits indirect comparisons of female and male job classes by looking at the relationship between the value of the work performed and the compensation received by male job classes and applying those principles and practices to compensate female job classes. This method permits relative comparisons to be made for all female job classes in an establishment to the male job classes in the same establishment, even when there are only a few male job classes on which to base the comparisons. This method would enable about 340,000 more women in the private and public sectors to benefit from the Act.

If a pay equity plan is prepared or revised using this method, the effective date of the first compensation adjustments would be as follows: a) in the case of employers in the public sector and employers in the private sector with 100 or more employees, no later than January 1, 1993 (changed from the original deadline of January 1, 1992); b) in the case of employers in the private sector with at least 50 but fewer than 100 employees, also no later than January 1, 1993; c) in the case of employers in the private sector with at least 10 but fewer than 50 employees, no later than January 1, 1994.

Proxy comparisons apply to the public sector only, to employers who are declared by order of a review officer to be "seeking employers" for the purposes of this Act. Where comparisons cannot be made within a public sector organization through job-to-job or proportional value comparison methods, proxy comparisons provide for comparisons to another public sector organization. This method allows more than 80,000 women to benefit from the Act in public sector organizations such as in day care and in nursing, even where there are no male job classes in their workplaces. The organizations seeking pay equity and their "proxy counterparts" are determined in accordance with the regulations. Provision is made for the bargaining agents to be involved in the choice of a proxy organization as well as the preparation and application of the plan. Where there is no bargaining agent, the plan must be posted and employees dispose of 90 days to submit comments. The first compensation adjustments to be made under this method are required to be made effective January 1, 1994.

The Act specifies the circumstances in which the Crown is considered to be the employer of a person, for the purposes of the Act. This provision retroactively became effective on December 18, 1991. However, the Act establishes January 1, 1998 as the deadline for public sector employers to have achieved pay equity. The original version required public sector employers to achieve pay equity by January 1, 1995.

When an employer sells the business, the purchaser is required to assume the employer's obligations under the Act. In addition, a mechanism for amending a pay equity plan at an establishment when circumstances change is provided.

The Act enables review officers to issue compliance orders for failure to comply with the Act. Certain administrative and procedural changes are made with respect to the powers of the Pay Equity Hearings Tribunal.

The Act provides for the power to adopt regulations which can limit the requirement that an employer maintain pay equity.

The Act came into force, except for section 2 which is deemed to have come into force December 8, 1991, on July 1, 1993.

Ontario also adopted two regulations under the Pay Equity Act. The first amends the appendix to the Schedule of the Act which identifies which employers are deemed to be public sector employers for the purposes of the Act. The second identifies which public sector employers are "seeking employers" and the potential proxy employers that may be used to effect a comparison through the proxy method of comparison.

Prince Edward Island introduced Bill 5, An Act to Amend the Pay Equity Act, on June 22, 1993. The Bill would modify the implementation date for pay equity adjustments for employees of hospitals and of the University of Prince Edward Island. In both these cases, Stage II of the implementation process as set out in section 17 of the Act has not yet been completed and the matter has been referred to arbitration but no award or order has yet been made. The Bill postpones any implementation of pay equity adjustments to these two sectors until the first day of the month following the order of the arbitration board. This Bill would be deemed to have come into force on January 1, 1992.

In addition, **Quebec** re-established the application of section 41.1 of the Labour Standards Act for certain part time employees in respect of whom the application of that section had been suspended since January 1, 1992. Section 41.1 of the Act provides equal pay for equal work to part time workers performing the same tasks in the same establishment and who earn not more than twice the minimum wage. A recent regulation restores, effective August 3, 1993, coverage of section 41.1 for employees engaged in the wholesale trade of food products or the storage of such products and, effective December 31, 1994, for those engaged in the retail trade or storage of such products. Salary adjustments resulting from the application of this section may be deferred until the expiry date of an applicable collective agreement in force at the time of the above effective dates. The salary adjustments may also be deferred, in certain circumstances, where the collective agreement has expired but the parties have engaged in negotiations to renew it at the time of the effective dates.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Ontario**, the Labour Relations and Employment Statute Law Amendment Act, 1992 (Bill 40) received royal assent on November 5, 1992, and came into force on January 1, 1993. Upon its coming into effect, provisions protecting the employment and collective agreements of workers employed in services in a building (e.g. cleaning, food and security services) became retroactive to June 4, 1992. Following is a summary of the most important changes to the Labour Relations Act.

Objectives of the Act

- The preamble to the Labour Relations Act has been repealed, and an added purpose clause states the objectives of the Act (e.g. to ensure that workers can freely exercise the right to organize, and to encourage the process of collective bargaining so as to enhance : (1) the ability of employees to negotiate terms and conditions of employment, (2) the extension of co-operative approaches between the parties in adapting to changes in the economy, developing work force skills and promoting workplace productivity, and (3) increased employee participation in the workplace).

Certification of Trade Unions

- The exclusion from the Act of domestics, certain categories of professionals and classes of agricultural or horticultural workers prescribed by regulation has been removed. The requirement for security guards to only join trade unions which represent security guards exclusively has been eliminated. At the request of either party, the Ontario Labour Relations Board (OLRB) will place security guards in a different bargaining unit than other employees if their monitoring duties would give rise to a conflict of interest.

- Faster Board processes are provided to deal with complaints arising from the disciplining or discharging of employees, or the imposition of other penalties, during organizing campaigns.

- Organizing activity is allowed on third-party property to which the public normally has access, but only at or near (but outside) the entrances and exits to a workplace (e.g. in front of a shop in a shopping center). The OLRB has the power to restrict such activity if it causes undue disruption.

- The one dollar minimum membership fee to be paid by employees on signing a membership card in order to be considered members of a trade union has been eliminated.

- The OLRB is directed to consider evidence of membership in a trade union only if it is filed on or before the date of application for certification, and it is in writing and signed by each employee concerned.

- The OLRB power to certify a trade union in order to remedy an unfair labour practice has been modified by removing the "adequate membership support" requirement (i.e. certification can be granted if the OLRB considers that the true wishes of the employees concerning representation by a trade union are not likely to be ascertained due to the unfair labour practice).

- It is provided that the level of membership in a union required to make a representation vote mandatory is from 40% to 55% (previously from 45% to 55%).

- The OLRB is required to include full-time and part-time employees in the same bargaining unit in defined circumstances. This does not apply to craft units, or units in the construction industry. The Board is required to separate full-time and part-time employees where there was insufficient support for certification in the combined unit. Also, it may separate bargaining units if a trade union is the bargaining agent for either the full-time or part-time employees.

- The OLRB has been given the power to consolidate, at the request of either party, two or more bargaining units, if the same union represents separate groups employed by the same employer. The OLRB takes notably into consideration the advantages of viable and stable collective bargaining and the potential for serious labour relations problems, and is directed not to combine units, in the case of manufacturing operations, if the employer has established that this would unduly interfere with its ability to maintain significant operational or production differences between two or more geographically separate facilities or to continue to operate those facilities as viable and independent businesses. An application for consolidation can be joined to an application for certification. This provision does not apply to the construction industry.

Collective Bargaining Process

- On application to the Minister by either the employer or trade union, a first collective agreement is settled by private arbitration where the parties have been in a legal strike/lockout position for 30 days or more, and have been unable to reach an agreement. Any strike or lockout is then terminated. The provisions that existed previously and permitted an application to the Board for a direction to settle a first collective agreement by arbitration have been maintained.

- During a labour dispute, an employer is prohibited from using employees in the bargaining unit or replacement workers, whether paid or not, (except managers, other excluded persons, and employees not in the bargaining unit, who work at the place of operations and give their consent) to perform the work of striking or locked-out employees or the work of managers and other persons replacing these employees. Employers continue to have the right to contract work out. This legislation applies to lockouts and legal strikes authorized by at least 60% of those in the bargaining unit who participated in a secret ballot. If there is a complaint relating to replacement workers during a strike or lockout, the burden of proof is on the employer that it acted legally. A number of exceptions are provided to ensure the delivery of specified essential services and to prevent danger to life, health or safety, the destruction or serious deterioration of property or severe environmental damage.

- Employers are required to continue employment benefits (including coverage under insurance plans, but excluding pension benefits) during a legal strike or lockout if the trade union makes payments sufficient to maintain them.

- Employees are provided with just cause protection in cases of disciplinary action or dismissal following certification or voluntary recognition, under a collective agreement (subject to the right of the parties to agree to limit the application of this protection in the case of probationary employees), or during a dispute to renew a collective agreement (until it is settled or the right of the union to represent the employees is terminated).

- The limitations existing previously on the right to return to work during a strike have been repealed. If after a lockout or legal strike the parties do not reach an agreement on reinstatement, returning employees must be given priority for the positions they held when the work stoppage began, and, if there is insufficient work for all these employees, they must be reinstated as work becomes available according to seniority (as defined in recall provisions of a collective agreement if any) unless during the starting up of the employers' operations employees are not able to perform the work required.

- Individuals are permitted to picket on third-party property to which the public normally has access, during a lockout or legal strike, but only at or near (but outside) the entrances and exits to the operations at which the work of the struck or locking out employer is carried on. Such union activity can be restricted by the OLRB if it causes undue disruption.

- The OLRB has been given the power to settle one or more of the terms of a collective agreement when the existing duty to bargain in good faith has been violated and the Board considers that other remedies are insufficient.

- Every collective agreement must contain a consultation provision if a party so requests during the negotiation period. Such provision must provide that the parties consult regularly during the term of the agreement about pertinent workplace issues.

Protection for Bargaining Rights

- The purchaser of a business has been made party to any proceedings before the OLRB under any Act, that affect employees in the business or their bargaining agent, including bargaining notices, conciliation, mediation and OLRB proceedings.

- The protection of bargaining rights and collective agreements has been extended to situations in which the sale of a business causes a transfer from federal to provincial jurisdiction.

- Protection has been given to bargaining rights and collective agreements with respect to workers employed by a building owner or manager, or a contractor, to provide services on the premises (e.g. building cleaning, food services and security services) when the employer ceases, in whole or in part, to provide the services, and substantially similar services are subsequently provided at the premises under the

direction of another employer. This change was retroactive to June 4, 1992; it does not apply to construction, production or manufacturing activities. Amendments to the Employment Standards Act give employment rights to workers in these services when, without there being a sale of the business, their employer ceases to provide the services after June 4, 1992, and another employer begins to provide substantially similar services on the same premises.

Administration and Enforcement of the Labour Relations Act

- The OLRB has the power to issue orders on an interim basis on application in a pending or intended proceeding.

- Certain changes to the grievance arbitration process have been introduced with the purpose of making it more effective and expeditious, notably by giving arbitrators additional procedural powers and ensuring that they can decide all issues before them.

- The parties may, at any time, agree to refer one or more grievances to a mediator-arbitrator, despite any provision included or deemed to be included in a collective agreement, for the purpose of resolving the grievances in an expeditious and informal manner.

Adjustment and Change in the Workplace

- The Minister of Labour has the power to establish an advisory service whose purpose is to assist employers, trade unions and employees to respond to changes in the work force, in technology and the economy through co-operation and innovation.

- There is a statutory duty for employers to bargain in good faith with concerned unions towards a labour adjustment plan whenever an employer is giving notice of closure or termination of 50 or more employees. The OLRB does not have the power to determine an adjustment plan for the purpose of remedying a contravention of this provision. A negotiated adjustment plan is enforceable as if it were part of the collective agreement or, if no agreement is in effect, any difference relating to its interpretation or application can be referred to a single arbitrator at the request of either party. It is also specified that the purposes of committees established under the Employment Standards Act in cases of termination of employment are to consider alternatives to the terminations and to facilitate the adjustment process.

In **British Columbia**, effective for the most part January 18, 1993, the Labour Relations Code has replaced the Industrial Relations Act. Major changes are described below.

Unfair Labour Practices

- The new Code provides that, if an employee is discharged, suspended, transferred, laid off or otherwise disciplined during an organizing campaign or at any other time when no collective agreement is in force, a complaint of unfair labour practice must be resolved without delay. An adjudication hearing must be held by the Labour Relations Board within three days and a decision given two days after completion of the hearing.

- The test for automatic certification where an unfair labour practice has been committed has been changed. The test is whether the union would likely have obtained the requisite support for certification in the absence of the unfair labour practice. The focus in the former legislation was on whether the representation vote measured the true wishes of the employees.

- During an organizing campaign, employers continue to be free to communicate to employees a statement of fact or opinion reasonably held with respect to their business.

Certification and Decertification

- The requirement to hold a mandatory vote when there is an application for certification (except in the construction industry) has been removed. Trade union certification occurs where support for a bargaining unit is demonstrated by 55% or more of the employees in the unit who sign membership cards with a union. If support is between 45% and 55%, a vote is held within ten days of the date of application or such longer period ordered by the Labour Relations Board if it is conducted by mail. The Board has the power to order that another representation vote be taken if less than 55% of eligible employees cast ballots.

- The former legislation permitted the certification of dependent contractors only where they could be included in an existing bargaining unit. The Code permits dependent contractors to form their own bargaining unit. Where a certification already exists for a group of employees of the same employer, the Board is required to determine whether the dependent contractors are more appropriately included in the existing unit or a separate unit.

- In the case of an application for certification concerning supervisory employees and other employees, the Board may certify the applicant trade union for the unit, for a unit of supervisory employees only, or for a unit composed of some or all of the other employees.

- Provisions which allowed an employer to apply for decertification if there had been no employees in the bargaining unit for two years have been eliminated.

Successor Rights and Obligations

- Changes relating to the sale, transfer, lease or disposition of a business give more discretion to the Labour Relations Board to determine whether or not an employer is a successor (e.g. enumerated factors to be taken into account by the Board in determining successorship have been eliminated).

- The provisions on successor rights and obligations are now applicable to all situations where a business or part of it is sold, leased, transferred or otherwise disposed of by a trustee in bankruptcy.

- With respect to the legislative provision that may be invoked by the Labour Relations Board to treat several businesses as one employer for the purposes of collective

bargaining, a change has returned the language of the provision to "common control or direction" (the terms "same control and direction" were used in the previous legislation).

- The Labour Relations Code provides for the extension of protection for bargaining rights and collective agreements to situations in which the sale, lease or transfer of a business causes a shift from federal to provincial jurisdiction.

First Collective Agreements

- In negotiating a first collective agreement, either party can initiate a mediation process if there is a failure to reach agreement and a majority of employees, who have participated in a strike vote, are in favour of a strike. The process suspends the right of the parties to engage in a strike or lockout, unless this is subsequently authorized in a recommendation of the mediator, and provides for time limits.

- The legislation permits the use of arbitration or mediation/arbitration to settle issues that are not resolved by the mediation process. If the mediation process does not achieve a settlement, the Board must direct the use of arbitration, mediation/arbitration, or allow the parties to settle matters through a strike or lockout.

Resolution of Collective Bargaining Disputes

- Intervention in collective bargaining disputes is reduced under the new Labour Relations Code, and the power to intervene is placed with the Minister of Labour and Consumer Services. Formerly, the Commissioner of the Industrial Relations Council had various discretionary powers with respect to the resolution of disputes.

- The mediation and fact-finding procedures of the former Act have been retained to help the parties resolve their differences and clarify the issues in dispute. Industrial inquiry commissions may also be appointed by the Minister to inquire into a dispute and make recommendations for a settlement.

- The Code gives the Minister the power to appoint a special mediator at any time during a collective bargaining dispute. The appointment of a special mediator does not restrict or prohibit a strike or lockout unless the parties so agree.

- Another provision allows the Minister to establish industry advisory councils to examine labour-management relations in those industries and recommend measures that may contribute to the improvement of those relations.

- The possibility of establishing public interest inquiry boards and the requirements relating to public sector interest arbitration, as provided under the Industrial Relations Act, have been eliminated.

- A last offer vote, directed by the Minister (previously the Commissioner of the Industrial Relations Council) during a strike or lockout, has been retained in the new Code. An employer's ability to request such a vote before a work stoppage has also been retained.

Strikes and Lockouts

- Votes continue to be mandatory before a strike or lockout. However, the requirement that these votes be government-supervised has been eliminated. Strike votes as well as ratification votes are by secret ballot, and all members of a bargaining unit have the right to participate.

- A new section of the Code requires that an employer continue health and welfare benefits (other than pension benefits or contributions) to striking or locked out employees provided that the trade union pays the total costs or premiums. The parties may agree in writing to be excluded from the operation of this provision.

Essential Services

- Either of the parties to a collective bargaining dispute may request the Chair of the Labour Relations Board, or the Chair may decide on his/her own initiative, to investigate whether the dispute poses a threat to the health, safety or welfare of the public. After receiving a report of the Chair of the Board, or on his/her own initiative, the Minister of Labour and Consumer Services may direct the Board to designate essential services.

- Essential services are limited to threats to "health, safety or welfare", and previous references to educational services and threat to the economy of the province have been deleted.

- The Board may appoint one or more mediators to assist the parties to reach an agreement on essential services designations. It must then submit a decision regarding essential services within 30 days after receiving a mediation report.

- If the process of designation is initiated before the beginning of a strike or lockout, no work stoppage may occur until the process has been completed.

- Specific timeframes for completion of the designation process are provided so as not to unduly interfere with the right to strike or lockout. The provision imposing a "cooling-off" period on the parties has been removed.

- The requirement for notice to strike or lockout is changed with respect to establishments affected by essential services designations. If the required 72-hour (or possibly longer) strike or lockout notice period expires without the work stoppage occurring, the party is required to give a new notice of at least 72 hours before commencing a strike or lockout.

Picketing

- The Code retains the previous provisions on picketing, which are based on the principle that, as much as possible, the impact of picketing must be restricted to those parties directly involved in a labour dispute. There is, however, one modification. The former legislation required that third parties not be affected by the impact of picketing in a common site situation. Under the new provisions, at the discretion of

the Labour Relations Board, workers may exercise the right to picket their own worksite even though third parties may in some instances be affected (e.g. a site where two or more employers are located and which has only one entrance).

Replacement workers

- During a legal work stoppage, an employer is prohibited from using the services of persons transferred, hired or engaged after notice to bargain was given or, if no such notice was given, after the beginning of negotiations. Also, an employer cannot use the services of management personnel and employees ordinarily working at another of the employer's places of operations, and cannot contract out work not carried out because of the strike or lockout.

- Those who can perform replacement work during a work stoppage include: consenting members of the bargaining unit affected as well as managers and employees not in the bargaining unit, who work at the place of operations and agree to perform such work.

Secondary boycotts

- Under the previous law, secondary boycott agreements were considered to be illegal. These are negotiated provisions of collective agreements which permit employees not to use or handle products of a struck employer, or require that the employer deal with unionized companies. The new Code makes it possible for the parties to negotiate terms of collective agreements allowing secondary boycotts.

- Secondary boycott provisions are governed by the Labour Relations Code and are not permitted if their impacts are considered by the Labour Relations Board to be an illegal work stoppage or to constitute illegal picketing, or if they are considered an unfair labour practice against another party.

Expedited Arbitration Process for Grievances (Provisions not yet in force)

- A new system of expedited arbitration administered by the Collective Agreement Arbitration Bureau of the Ministry of Labour and Consumer Services will be established. Once the grievance procedure under a collective agreement has been exhausted, either party may, under certain conditions, request that this process be used to resolve a grievance. The Bureau will then appoint an arbitrator to hear and resolve the grievance within strict time limits. The arbitration hearing will begin within 28 days of the application to use expedited arbitration, and the arbitrator's decision will be made within 21 days of the conclusion of the hearing.

- A settlement officer may be appointed to provide assistance to the parties before the arbitration hearing if a party so requests and the other agrees.

- Despite any grievance or arbitration provision of a collective agreement, the parties may, at any time, agree to refer one or more grievances to a single mediator-arbitrator for resolution in an expeditious and informal manner.

- The Arbitration Bureau will be assisted by an appointed advisory committee composed of management, labour and arbitrators who will provide advice on the list of arbitrators, and on possible training programs for arbitrators and settlement officers.

Joint Consultation (Provisions in force on May 1, 1993)

- The Code provides that all collective agreements must contain a provision requiring a consultation committee to be established if a party makes a written request for one during the bargaining period. The provision must provide that the parties consult regularly during the term of the agreement for the purpose of promoting the resolution of workplace issues, responding and adapting to changes in the economy, fostering the development of work related skills and promoting workplace productivity. Upon a joint request of the parties, the Mediation Division of the Labour Relations Board must appoint a facilitator to help the parties develop a more cooperative relationship.

- A new technological change section provides that the parties must meet to develop an adjustment plan in response to the introduction, or planned introduction, of a change which affects the working conditions or employment security of a significant number of employees covered by a collective agreement. Adjustment plans will no longer be referred to arbitration as in the former legislation. Possible elements of an adjustment plan include consideration of alternatives to the proposed change, amendments to the collective agreement, human resource planning and employee counselling and retraining, notice of termination and severance pay, entitlement to pensions and other benefits as well as a bipartite process for overseeing the implementation of the adjustment plan. The notice period for a planned change is reduced from 90 days to 60 days.

Administration of the Code

- The ongoing administration of the Code is by the Labour Relations Board. It has replaced the Industrial Relations Council.

- The Board continues to adjudicate matters brought before it and to provide mediation services to assist the parties during a collective bargaining dispute.

- All reports to the Board from persons appointed to undertake investigations on the Board's behalf are disclosed to the parties. An exception to the requirement for disclosure to the parties is information relating to union membership which is only disclosed with the consent of the Board.

- The provision requiring the Board to publish its decisions has been amended to include the requirement that decisions be made within a reasonable period of time.

- Leave from the Board is required for a party to apply for reconsideration of a Board decision. This restriction on the right to appeal decisions will reduce delays in the final resolution of matters coming before the Board.

On June 23, 1993, the **federal government** approved Bill C-101, An Act to amend the Canada Labour Code and the Public Service Staff Relations Act, which came into effect on the same date.

An amendment to Part I of the Canada Labour Code (Industrial Relations) provides that where the Minister considers that a collective bargaining dispute affects the public interest, he/she may direct the Canada Labour Relations Board, or another person or body, to conduct a vote among the employees in the bargaining unit concerned as to the acceptance or rejection of the employer's last offer made to the trade union in respect of all matters remaining in dispute.

B. Public and Parapublic Sectors

In the **federal jurisdiction**, Bill C-26, the Public Service Reform Act received royal assent on December 17, 1992. Some provisions amending the Public Service Staff Relations Act took effect on April 1, 1993, while others came into force on June 1, 1993. The most important of these amendments are described below.

- A fair representation clause has been added to the Act. It stipulates that no bargaining agent may act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the bargaining unit.

- In determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Public Service Staff Relations Board (PSSRB) must establish bargaining units coextensive with the classes, groups or subgroups established by the plan of classification for positions in the Public Service, unless any such unit would not permit satisfactory representation of the employees and for that reason would not be appropriate for collective bargaining.

- A new clause provides that the employer and a bargaining agent may jointly elect to engage in collective bargaining with a view to the conclusion of a single collective agreement binding on two or more bargaining units. Such a decision is irrevocable until the single collective agreement is entered into.

- Before a bargaining agent requests an alternate dispute resolution process (as outlined below) and before it or the employer asks for conciliation or arbitration, either of them may request the assistance of a fact finder if negotiations have taken place in good faith without an agreement being reached. The PSSRB must appoint a fact finder after the parties have been consulted. Negotiations between the parties may continue during the period of appointment of a fact finder, but the bargaining agent may not seek an alternate dispute resolution process, and neither party may request conciliation or arbitration before the fact finder has submitted his/her report. The fact finder must confer with the parties, inquire into the matters in dispute, and make a report to the parties, including any recommendations for the settlement of the dispute.

  A party is required to provide the fact finder with any information directly relevant to the matters in dispute that he/she requests and that is in that party's possession.

The report of the fact finder must be submitted within 30 days after the date of appointment or such other period agreed on by the parties. If the employer and the bargaining agent conclude a collective agreement within 15 days after they have received a copy of the fact finder's report (or within a longer period set by the PSSRB with the agreement of the parties), the report is not made public. If an agreement is not reached, the PSSRB must make the report public.

- At any time during negotiations, a bargaining agent for which the process for resolution of a dispute is by the referral of the conflict to conciliation may seek an alternate dispute resolution process. Under this process, the bargaining agent is permitted to refer, if the employer approves, any term or condition of employment that may be included in a collective agreement to final and binding determination by whatever process the parties agree to. Such a decision is irrevocable until the determination is made.

- Upon receiving a request for conciliation, the Chairperson of the PSSRB will appoint a conciliation commissioner if any conciliator has made a final report of his/her inability to assist the parties in reaching agreement, and both parties agree to such an appointment. However, the Chairperson may decide not to appoint a conciliation commissioner if, after consulting the parties, he/she is of the opinion that the appointment is unlikely to assist the parties in reaching agreement. Also, no conciliation commissioner may be appointed until the process of designating positions having duties necessary to the safety or security of the public is completed.

- Where the bargaining agent for a bargaining unit has chosen conciliation as its method of dispute resolution, the parties must meet and review the position of each employee in the bargaining unit to determine if it has safety or security duties. If the parties disagree on whether any positions have safety or security duties, the employer must, within prescribed time limits, refer the positions in dispute to a designation review panel consisting of three persons (one representative of each party and a chairperson selected by them or appointed by the PSSRB). The functions of the designation review panel are to review only the positions in dispute and to make written non-binding recommendations to the parties as to whether these positions have safety or security duties.

  If, after considering the recommendations of a designation review panel, the parties continue to disagree on whether any positions have safety or security duties, the employer must, within the prescribed limitation period, refer the positions in dispute to the PSSRB. The Board reviews the positions in dispute and, after giving the parties an opportunity to make representations, determines if they have safety or security duties.

  A procedure permits either party to notify the other in writing that they must meet and review any position to determine if it has, or does not have, safety or security duties. Such a review may only take place one year or more after a previous review under the Act.

- If a legal strike occurs (or may occur) during the period following the dissolution of Parliament for a general election and, in the opinion of the Governor in Council, it

adversely affects (or would adversely affect) the national interest, he/she may delay any strike action until 21 days following the date fixed for the return of the writs.

Another amendment to the Public Service Staff Relations Act, contained in An Act to amend the Canada Labour Code and the Public Service Staff Relations Act, came into force on June 23, 1993. It gives a Minister designated by the Governor in Council, other than a member of the Treasury Board, the power to order a vote on the employer's last offer in respect of all matters remaining in dispute, when he/she considers that a collective bargaining dispute affects the public interest. The vote is conducted by the Public Service Staff Relations Board or another person or body.

In **Quebec**, An Act to amend the Labour Code and the Act respecting the Ministère du Travail came into force on March 25, 1993. The Act has modified the Labour Code mainly to make changes to the process for resolving disputes involving police officers or fire fighters and municipal corporations or intermunicipal boards.

Upon application by one party, the Minister of Labour must appoint a mediator to help a municipal corporation or an intermunicipal board and an association of employees certified to represent its police officers or fire fighters to settle their dispute. The mediator has 60 days to bring the parties to an agreement. Upon his/her request, this period may be extended by not more than 30 days.

If there is no agreement at the expiry of the period of mediation, the mediator must give his/her report to the parties and send a copy to the Minister. A party may, after receiving the report, apply to the Minister for the referral of the dispute to arbitration. The arbitrator is appointed from a list which the Minister draws up for the specific purposes of the arbitration of disputes involving municipal police officers or fire fighters. The Minister may enter on the list the names of persons proposed jointly by all associations recognized by order of the government as being the most representative associations of municipal corporations, intermunicipal boards, police officers and fire fighters. If there is not a sufficient number of joint proposals approved by the Minister, the latter must select arbitrators whose names appear on a list he/she draws up each year in consultation with the Conseil consultatif du travail et de la main-d'oeuvre (Advisory Council on Labour and Manpower). The list is valid for a period of five years, during which it may be amended by the Minister after he/she has consulted the representative associations mentioned above.

In rendering his/her award, the arbitrator may take into account, among other things, the conditions of employment of the other employees of the municipal corporation concerned or of the municipal corporations which are party to the agreement creating the intermunicipal board concerned, as well as the conditions of employment prevailing in similar municipal corporations or intermunicipal boards or in similar circumstances. The arbitrator must render an award based on the evidence collected at the inquiry. The award binds the parties for a period of not less than one year nor more than three years. The parties may, however, agree to amend its content.

The Minister must present to the government, at the latest on March 1, 1997, a report on the implementation of these provisions.

In **British Columbia**, the Public Sector Employers Act was assented to on July 29, 1993.

The purposes of this Act are to ensure the coordination of human resource and labour relations policies and practices among public sector employers, and to improve communication and coordination between public sector employers and representatives of public sector employees.

The Act provides for the establishment of the Public Sector Employers' Council. The council consists of the minister chairing Treasury Board, a maximum of seven persons who are ministers or deputy ministers, a person nominated by each public sector employers' associations established under the Act, and the commissioner of the Public Service Employee Relations Commission.

The functions of the council are:

- to set and coordinate strategic directions in human resource management and labour relations;

- to advise the government on human resource issues with respect to the public sector; and

- to provide a forum to enable public sector employers to plan solutions to human resource issues.

The exercise of these functions must be consistent with cost efficient and effective delivery of services in the public sector.

Another function of the council is to enable representatives of public sector employees to consult with public sector employers on policy issues that directly affect the employees.

In addition, the Act provides that an employers' association must be established for each sector other than the public service sector. This includes school boards, post-secondary educational institutions, hospitals as well as Crown corporations and public sector boards, commissions, councils and authorities designated by regulation. Each of these public sector employers must become and remain a member of the employers' association for the applicable sector.

The government must be represented on the board of directors of every employers' association.

The purposes of an employers' association are:

- to coordinate compensation for employees who are not subject to collective agreements as well as benefit administration, human resource practices and collective bargaining objectives;

- to foster consultation between the association and representatives of employees in the sector; and

- to assist the Public Sector Employers' Council in carrying out any objectives and strategic directions for the employers' association.

An employers' association or two or more of its members may apply to the Labour Relations Board for accreditation under the Labour Relations Code. An accredited employers' association acts as bargaining agent for the members of the association named in the accreditation.

Also, at the request of two or more members of an employers' association or on his/her own initiative, the Minister of Labour and Consumer Services may, after any investigation considered advisable, direct the Labour Relations Board to consider whether in a particular case an employers' association or any group of employers in an association would be an appropriate bargaining agent for the employers in a sector or part of a sector. The Minister may make such an order only if an employers' association or any of its members have at any time made an application to the Labour Relations Board for multi-employer accreditation, and he/she considers that such action is necessary to secure and maintain industrial peace and promote conditions favourable to the settlement of disputes.

Upon receiving a recommendation from the Labour Relations Board, the Minister may direct that the employers' association or any group of employers in the association has exclusive authority to bargain collectively for the employers he/she has named and to bind those employers by collective agreement.

The provisions outlined above will come into force on a date to be determined by the government.

The Act also provides for changes to the School Act which took effect on the date of assent. These changes contain a new definition of "teachers' union", which from now on is described as an association of teachers that is certified as the bargaining agent for the teachers in one or more school districts under the Labour Relations Code and includes a council of trade unions that is certified to act as the bargaining agent for teachers under the Code.

In **Ontario**, Bill 49, the Crown Employees Collective Bargaining Act, 1993, was introduced on June 14, 1993. This Bill relates to the collective bargaining of Crown employees. It proposes to repeal the Crown Employees Collective Bargaining Act and to provide for the application of the Labour Relations Act to employees of the Crown, who would be given the right to strike.

A new broader definition of "Crown employee" would be provided. Among others, it would no longer exclude those persons employed in a managerial capacity, except when they regularly provide advice to Cabinet, a minister or a deputy minister on matters that materially affect the terms or conditions of employment of Crown employees.

The Bill would modify the application of the Labour Relations Act to Crown employees. The modifications would relate to various provisions of the Act, including those dealing with voluntary arbitration of disputes, first contract arbitration, grievance arbitration, successor rights, use of bargaining unit employees during a strike or lockout, and limitation on the right to strike or to lock out. Certain provisions of the Labour Relations Act would not apply,

such as those relating to the permitted use of "specified replacement workers" during a strike or lockout and those dealing specifically with the construction industry.

With respect to the limitation of the right to strike or to lock out, the new legislation would provide that the employer and the trade union must have an essential services agreement before an employee may strike or an employer may declare a lockout. The parties who have or are negotiating a collective agreement would be required to make an essential services agreement.

"Essential services" would be those services that are necessary to enable the employer to prevent danger to life, health or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts. "Essential services agreement" would mean an agreement between the employer and the trade union that applies during a strike or lockout and that has an essential services part providing for the use of bargaining unit employees as well as an emergency services part that provides for the use of a larger number of such employees in emergencies.

The essential services part of an essential services agreement would include provisions identifying the essential services, the number of bargaining unit employees in particular positions that are necessary and the employees who according to an agreement between the employer and the trade union will be required to work during a strike or lockout.

At any time after the employer and trade union are required to begin negotiations, the Minister of Labour would, at the request of either party, appoint a conciliation officer to confer with the parties and endeavour to effect an essential services agreement. On application by either party, the Ontario Labour Relations Board would determine any unresolved matters. The Board would then have to consider the impact of its decision on the trade union's bargaining strength, and would not be permitted to exceed the number of employees proposed by the employer.

An essential services agreement would continue until terminated by one of the parties but only when a collective agreement is in place and there are at least 190 days left before its expiry.

On application by a party to an essential services agreement, the Board could enforce the agreement, amend it and make such other orders as it considers appropriate.

A party to an essential services agreement could apply to the Ontario Labour Relations Board for a determination as to whether, because of that agreement, meaningful collective bargaining is prevented. The Board would make its determination in accordance with regulations issued under the Act. If the Board determines that meaningful collective bargaining is prevented, the parties would be deemed to have irrevocably agreed to refer all matters in dispute to final and binding arbitration. The decision of the board of arbitration would not include any term relating to pensions, staffing levels or work assignments.

In addition, the Bill provides that the Grievance Settlement Board would be continued and would deal with grievance arbitrations. Provisions are made for its composition, administration and procedure.

Lastly, the Bill deals with certain transfers of undertakings that would cause those employed in the undertakings to be subject to a different collective bargaining scheme. The provisions in question would be analogous to the Successor Rights (Crown Transfers) Act which would be repealed.

In a number of jurisdictions, laws dealing with restraint in the public sector have been amended or adopted.

In **Newfoundland**, effective December 23, 1992, An Act to amend the Public Sector Restraint Act, 1992 has reduced the restraint period provided by the Public Sector Restraint Act, 1992 from 36 to 24 months. It has also clarified when the restraint period began as it applies to provincial court judges.

In addition, an amendment provides that where, on the expiry of the restraint period, a collective agreement covered by the Act continues in force, its provisions on pay scales are of no effect. The pay scales that applied during the restraint period to the public sector employees concerned continue to apply until new ones are agreed to by the pertinent public sector employer and the bargaining agent.

In the **federal jurisdiction**, An Act to provide for government expenditure restraint received royal assent on April 2, 1993. Provisions contained in Part 1 of this Act, which are all in force, have amended the Public Sector Compensation Act adopted in 1991, and several other Acts to provide that wages in the federal public sector remain at current levels for two years.

The legislation applies to federal government departments, boards, commissions and agencies, designated Crown corporations (including their directors), the Senate, House of Commons and Library of Parliament. It also covers the staff of ministers and of members of the Senate and House of Commons, order-in-council appointees, judges and members and officers of the Canadian Forces and of the Royal Canadian Mounted Police.

Effective January 1, 1993, the sessional allowance payable to members of the Senate and House of Commons has been frozen for three years.

In **Quebec**, Bill 102, An Act respecting the conditions of employment in the public sector and the municipal sector, was assented to on June 17, 1993.

The general objective of this Act is to extend by two years collective agreements affecting public bodies and maintain, during that period, the salary rate and scales and the premiums that are effective on the original date of expiration. Public bodies are defined as including the government, its departments and agencies, school boards, colleges, universities, health care establishments, the provincial police force and various Crown corporations.

In addition, the Act provides that every public body, for the purpose of reducing by 1% the annual amount of its expenses relating to the remuneration and social benefits of the employees governed by a collective agreement, must, before March 31, 1994 and every twelve-month period thereafter, give each employee such number of days of unpaid leave as is determined by the government, not exceeding three days. However, every public body is required to take one of the following alternative measures, as the government prescribes, for such groups of employees as it determines:

1) an equivalent reduction of the number of days of sick leave credited, insofar as they are refundable each year, or a reduction of the indemnity standing in lieu of sick leave;

2) an equivalent number of unpaid holidays or days of vacation;

3) an equivalent reduction of the indemnity pertaining to the annual leave.

In the case of public bodies which provide instruction, the dates on which the employees take unpaid leave must be determined without reduction in the number of days of instruction.

It is possible for the parties to exclude themselves from the provisions dealing with the reduction of expenses arising out of the application of collective agreements if they negotiate and ratify amendments to the conditions of employment entailing a reduction of at least 1% of the annual amount of expenses relating to remuneration and social benefits.

Measures equivalent to those mentioned above apply to administrators of state, chief executive officers, officers, and management personnel and other personnel of public bodies who are not covered by a collective agreement. Such measures also apply to Members of the National Assembly and health professionals.

Finally, the Act provides that similar measures relating to the extension, without increases, of collective agreements and the reduction of expenses arising out of their application are applicable to municipal bodies. However, the latter can, by a resolution adopted before September 15, 1993, waive the application of the legislation. The other provisions of the Act will come into force on a date or dates to be fixed by the government.

In **Ontario**, the Social Contract Act, 1993 was adopted on July 8, 1993.

Effective June 14, 1993, the date on which it was introduced in the Ontario Legislative Assembly, the Social Contract Act, 1993, provides for the measures described below.

The Minister responsible for the administration of the Act must establish expenditure reduction targets for the various sectors and employers in the public sector, which include the Ontario Public Service Sector, the Health Sector, the Community Services Sector, the Schools Sector, the Colleges Sector, the Universities Sector, the Agencies, Boards and Commissions Sector and the Municipalities Sector. If there is a sectoral framework (i.e. a plan of expenditure reduction and adjustment measures for employees, that comply with the Act) in respect of a sector, the Minister must establish lower expenditure reduction targets for every employer in the sector who by August 1, 1993, has entered into a local agreement, or has put into effect a plan covering non-bargaining unit employees, that implements the sectoral framework. However, when the Minister so orders, a local agreement may be entered into not later than August 10, 1993, if there is a sectoral framework that relates to the sector of an employer.

An employee, bargaining agent or employer covered by a valid local agreement or a plan for non-bargaining unit employees may apply for payments out of a Public Sector Job Security Fund. The objective of the Fund is to provide payments to employees who are released from employment and to employers for the purpose of extending the employment of employees who

will be released. In certain circumstances, payments may be made to a bargaining unit employee who is released from employment when, in the opinion of the administrator of the Fund, the bargaining agent representing that employee made all reasonable efforts to enter into a local agreement with the employer to implement a sectoral agreement.

A structure for the negotiation of settlements in order to achieve the expenditure reduction targets is established at both the sectoral and local levels for bargaining unit employees. A structure is also provided for plans in respect of non-bargaining unit employees.

If there is no agreement or plan, employers will implement their expenditure reduction targets through a freeze in compensation (from June 14, 1993 to March 31, 1996) and, if the freeze does not produce the necessary savings, through unpaid leaves of absence (a maximum of 12 days or the equivalent for the period from June 14, 1993 to March 31, 1994, and for each of the following two fiscal years). Special provision is made for employees who perform critical functions.

If a sectoral framework or local agreement is not negotiated in 1993 as provided in the Act, the parties will have an opportunity to exclude themselves from the measures mentioned in the previous paragraph if they negotiate a two-year sectoral framework and local agreement by March 1, 1994. The Minister may order a ten-day extension (to March 10, 1994) with respect to the negotiation of a local agreement.

The expenditure reduction measures do not adversely affect employees earning less than $30 000 annually, excluding overtime pay. However, this may not apply if, in the opinion of the Minister, special circumstances exist with respect to a sectoral framework. In addition, the Act does not reduce any right or entitlement under the Human Rights Code or the Pay Equity Act.

The province is authorized to reduce its payments to public sector employers and, in cases prescribed by regulation, to require payments from them. Also, provision is made for the application of the Act to independent health professionals as well as to the members of the Legislative Assembly and other office holders, whether elected or appointed.

In **Manitoba**, the Public Sector Reduced Work Week and Compensation Management Act was assented to on July 27, 1993.

The Act contains measures permitting the implementation of a reduced work week by public sector employers, including the government, Crown corporations, hospitals, personal care homes, child and family services agencies, municipalities, school boards, colleges and universities, Crown agencies, and any person or organization designated as a public sector employer by regulation.

Public sector employers are permitted to require their employees to take leave without pay during one or two 12-month periods, the first one starting in the last nine months of 1993, provided the combined total of days and portions of days to be taken does not exceed 15 days in a 12-month period for any one employee.

The Act provides for the giving of notice to any concerned trade union of the intention of an employer to implement a reduced work week and for consultations between the parties.

However, if no agreement is reached by the employer and the union on a reduced work week within 30 days after notice is served, the employer may determine the number of days of leave without pay that each employee must take, when the leave must be taken within the 12-month period, and other matters relevant to the issue. Once filed with the Minister of Labour, an agreement between the parties or the determination made by an employer on the implementation of a reduced work week is binding on the employer, the union and the employees it represents.

If a school board implements a reduced work week, the leave without pay to be taken by any one teacher must not exceed 10 days in a 12-month period, and must consist of days that are set aside for teacher in-service, parent-teacher conferences, administration and pupil evaluation days.

During fiscal year 1993-94, there is a reduction of 3.8% in the remuneration of the Members of the Legislative Assembly, Provincial Court judges and government appointed members of Crown agencies, boards, commissions or committees. However, except in the case of the Members of the Legislative Assembly, this reduction may be achieved, where practicable, by the person's taking specific approved days or portions of days as leave without pay. For fiscal year 1994-95, the reduction will generally be equivalent to the amount by which the wages of provincial government employees covered by a collective agreement are reduced in the same period as a result of a requirement to take leave without pay.

The Act also provides for restraint measures applying to the compensation of medical practitioners during 1993-94 and 1994-95.

The new legislation applies retroactively to April 1, 1993.

C. Emergency Legislation

In **British Columbia**, the Educational Programs Continuation Act was passed on May 30, 1993.

This Act provided for the settlement of a dispute between the Board of School Trustees of School District No. 39 (Vancouver) and the Vancouver Teachers' Federation. It made it illegal to engage in a strike or lockout and ordered a resumption of ordinary duties by the employees.

The last collective agreement between the parties was extended and is considered to be in effect until a new one comes into force. An arbitrator was appointed under the Act to resolve the dispute within 30 days or a longer period determined by the Minister of Labour and Consumer Services. The decision of the arbitrator is binding on the parties, except insofar as they agree to modify it.

In addition, the legislation provides that the Minister may exercise certain powers upon the designation by regulation of any board of school trustees and the trade union representing its employees. School District No. 36 (Surrey) and the Surrey Teachers Association as well as School District No. 72 (Campbell River) and C.U.P.E. Local 723 have been designated under these provisions.

By virtue of the special powers, when a special mediator has been appointed under the Labour Relations Code, the Minister may order that (1) his/her recommendations constitute the collective agreement between the parties, or (2) the parties have 36 hours to reach a settlement or the special mediator will issue a report deemed to be the collective agreement. In either case, the constituted agreement may be modified if both the employer and the trade union agree on one or more changes.

The Act will be repealed on March 31, 1994 or on an earlier date set by regulation.

D. Construction Industry

In Saskatchewan, the Construction Industry Labour Relations Act, 1992 came into force on September 22, 1992. It provides for special labour relations legislation to govern collective bargaining in the construction industry.

The Act creates a framework for province-wide collective bargaining on a trade-by-trade basis in the construction industry by:

- providing the Minister of Labour with powers to determine trade divisions and designate representative employers' organizations;
- defining "trade division" as all unionized employers in a sector or sectors of the construction industry that are in a trade or in an identifiable class or group of unionized employers in a trade;
- giving the Labour Relations Board the power to determine a representative employers' organization for a trade division in specified circumstances;
- requiring unionized employers to bargain collectively through an employers' organization designated or determined to be the representative employers' organization for a trade division;
- requiring locals of a trade union to set up a council of locals for the purpose of bargaining collectively with the representative employers' organization for a trade division;
- permitting the negotiation and operation of a project collective agreement and the operation and renegotiation of a national collective agreement (i.e. an agreement applying in two or more jurisdictions) existing immediately prior to the coming into force of the Act;
- prohibiting "spot" certifications by establishing that the Labour Relations Board must determine the unit of employees that is appropriate for collective bargaining by reference to the geographical jurisdiction of the trade union applying; and
- permitting representative employers' organizations and trade unions to fix contract administration and industry development fees to be paid respectively by unionized employers and employees.

The Act regulates strikes and lockouts in the construction industry by:

- establishing a mandatory conciliation process for labour disputes before a strike or lockout can occur;

- requiring a strike or lockout vote by secret ballot and, if a majority is obtained, a notice of at least 48 hours before a strike or lockout can commence;

- establishing that when a trade union wishes to cause a strike, the strike must be held with respect to all unionized employers in the trade division and all the work being performed by those employers;

- requiring a trade union to ensure that all unionized employees of struck employers participate in a strike; and

- establishing that, when a representative employers' organization wishes to cause a lockout, all unionized employers in the trade division must participate in the lockout and must lock out all unionized employees.

The Act prevents unionized contractors from operating on a non-union basis through an associated corporate entity to avoid certification orders of the Labour Relations Board or to avoid adhering to the terms of the collective bargaining agreement between a representative employers' organization and a trade union by:

- empowering the Labour Relations Board to declare two related companies to be the same unionized employer for the purposes of the Act;

- giving the Labour Relations Board the power to grant additional relief (e.g. back wages), from the date of application to the Board, if, in its opinion, a spin-off company has been created with the intention of avoiding unionization or collective bargaining obligations under the Act; and

- making these provisions applicable to spin-off companies which commence carrying on business, undertakings or other activities in the construction industry after the coming into force of the Act.

The Act accommodates the practice of "reverse spin-offs" by:

- specifying that, in exercising its discretion to declare two related companies to be the same unionized employer for the purposes of the Act, the Labour Relations Board may recognize the practice of non-unionized employers performing work through unionized subsidiaries.

The Act creates a mechanism for the settlement of jurisdictional disputes between trade unions by:

- establishing a process to create, by regulation, a jurisdictional assignment plan for the resolution of jurisdictional disputes.

Enforcement mechanisms, paralleling those in The Trade Union Act, are established by:

- empowering the Labour Relations Board to determine if there has been a violation of the Act; and

- giving the Labour Relations Board the power to issue a compliance order that is enforceable as an order of the court.

In addition, the Act establishes transitional rules applying until province-wide agreements are negotiated under the new legislative framework.

In **Quebec**, there have been amendments to the Construction Decree under the Act respecting labour relations, vocational training and manpower management in the construction industry.

The Construction Decree has been modified to provide for the creation of a fund, supported by employers in the construction industry, to finance the costs related to studying, implementing and operating a Developmental training and retraining plan to promote the stabilization of income and employment for workers in the industry, including the payment of training allowances. The terms and conditions for the implementation of the Plan are described in a schedule that has been added to the Decree.

Also, the Construction Decree, which was to expire on April 30, 1993, was extended until June 14, 1993, and again until December 14, 1993.

In **Ontario**, a new regulation under the Labour Relations Act provides for the establishment of the Ontario Construction Secretariat. The membership of the Secretariat consists of an equal number of representatives of labour, management and the provincial government. They are appointed by the Minister of Labour.

The Act provides that the objects of the Secretariat are to facilitate collective bargaining in the industrial, commercial and institutional sector of the construction industry and to provide other assistance. This is done notably by collecting, analyzing and disseminating information concerning collective bargaining and economic conditions in the sector, and by holding conferences involving representatives of the employer bargaining agencies and the employee bargaining agencies. An additional object of the Secretariat, which is prescribed by the regulation, is the advancement of the unionized construction industry in Ontario.

The regulation also governs the payments that the employer bargaining agencies and the employee bargaining agencies are required to make to the Secretariat.

The regulation came into force on June 1, 1993.

E. Agriculture and Horticulture Industries

In **Ontario**, Bill 91, An Act respecting Labour Relations in the Agriculture Industry, was introduced on July 29, 1993.

The Act would apply to employees, employers, trade unions, councils of trade unions and employers' organizations in the agriculture and horticulture industries, subject to certain exceptions (i.e. municipalities, silviculture operations, and when the primary business is not agriculture or horticulture).

The Labour Relations Act would apply to the agriculture and horticulture industries. However, certain provisions, such as those relating to the right to strike and to lock out, would not apply, while others would be modified, including the provisions relating to the determination of bargaining units in the case of seasonal employees and access to employer property.

Labour relations statutes, collective agreements and trade union constitutions, by-laws or rules would not be interpreted so as to prohibit (or allow the prohibition of) a family member of an employer from performing any work for the employer.

Votes to ratify a proposed collective agreement would be by secret ballot, and all employees in a bargaining unit would be entitled to participate.

Strikes and lockouts would be prohibited. The parties could avail themselves of conciliation and mediation procedures. If a conciliation officer has reported to the Minister that he/she has been unable to effect a collective agreement, a selector appointed by the parties (or by the Minister if they fail to make the appointment within the prescribed time) would be required to select all of the final offer made by one party or the other on all matters remaining in dispute. The parties could, however, continue to negotiate, and the selector would not consider their final offers respecting any matters on which agreement has been reached.

If the parties prefer not to use the final offer selection process, they may, following notice to bargain, irrevocably agree to refer all matters in dispute to an arbitrator or a board of arbitration for final and binding settlement.

The Lieutenant Governor in Council would have the power to repeal by regulation the final offer selection provisions after the Act has been in force for three years. In the event such a regulation is made, provisions would be substituted, which would allow for conciliation and require an arbitration process (other than final offer selection) with respect to matters in dispute.

The legislation would also provide that the Minister may establish an advisory committee on labour relations in the agriculture and horticulture industries.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

Quebec amended its Act respecting occupational health and safety to provide for the appointment of a chairman of the board of directors and chief executive officer as well as a chairman and chief of operations of the Occupational Health and Safety Commission. Previously, the Act provided for the appointment of a chairman who also held the office of director general. The Act also provides for the creation of a financial division within the review office (i.e., for the review of decisions on claims made under the Act respecting industrial accidents and occupational diseases) and for the appointment of conciliators mandated to meet with the parties to an application for review and to attempt to reach a settlement. Certain provisions of this Act, including those respecting the creation of a financial division, came into force on October 7, 1992 and November 11, 1992.

Saskatchewan has adopted new legislation respecting occupational health and safety. The Occupational Health and Safety Act, 1993 will make the following changes with respect to the existing Act, with a view to:

- Place duties on contractors, owners and suppliers respecting matters under their control which affect worker health and safety.

- Enhance access to workplace health and safety information. Employers are required to inform their workers of any information in their possession which is relevant to the workers' health and safety.

- Require that certain employers, starting with the larger, high risk industries, develop and implement an occupational health and safety program. The programs, which must be developed in consultation with the occupational health committee or representative, would identify potential hazards at the workplace and how they can be controlled, provide for worker participation in certain areas such as accident investigations and safety audits, and identify training needs and how to fill them. The Act thus seeks to make everyone recognize that the key to an effective internal responsibility system is an occupational health and safety program in which employers and workers participate.

- Address the problem of workplace violence, by placing the duty upon employers at prescribed places of employment where violent situations have occurred or may reasonably be expected to occur to develop and implement, after consultation with the occupational health committee or representative, or with the workers themselves, where there is no committee or representative, a policy statement to deal with potentially violent situations. The policy statement must include any provisions prescribed in the regulations.

- Require employers to ensure that the workers are not exposed to harassment at the place of employment. Workers are required to refrain from harassing others. Regulations will also prescribe measures that employers must take to deal with harassment complaints.

- Provide that occupational health committees be established at every workplace where 10 or more workers are employed, and worker representatives be designated at prescribed workplaces of less than 10 employees engaged in activities of higher than average risk. The duties of representatives are similar to those of committees. Multiple occupational health committees could be required at certain workplaces where work divisions so dictate, such as at a mine, underground and above ground. A multiple employer committee could be required at construction sites.

- Confirm a worker's right to refer a health and safety concern directly to an occupational health officer.

- Clarify the right to refuse unusually dangerous work, by establishing a procedure for a worker whose refusal to work has not been supported by an occupational health officer. In addition, the employer is required to inform, in writing, other workers who are asked to do the refused work that the worker has refused to do, of every previous refusal by a worker to perform the work and the reasons for the refusal, the reasons why the employer believes the subsequent worker can perform the work safely, and the right of the subsequent worker to refuse to perform the work if that worker believes it is unusually dangerous.

- Extend worker protection from discriminatory action for participation in health and safety activities. These provisions enhance the existing protection of workers against employer reprisals by including workers who are complying with the legislation, seeking enforcement of the legislation, giving information to an occupational health officer, an occupational health committee or member, or an occupational health and safety representative, or testifying in court or other proceedings.

- Clarify the occupational health officer's power to stop work where a violation of the Act involves a serious risk to the health and safety of a worker.

- Broaden the appeal process. Any person directly affected by a decision of an occupational health officer has the right to appeal that decision to the director of the Occupational Health and Safety Division. The director's decision is subject to appeal to an adjudicator appointed under the Act. The adjudicator's decision is subject to appeal on questions of law and jurisdiction or on questions relating to stop work orders, to the Court of the Queen's Bench. Appeals do not suspend the decision being appealed unless the person hearing the appeal so directs.

- Establish higher penalties to better reflect the serious nature and consequences of non-compliance with the Act. Four categories of offenses with corresponding maximum fines are established: 1) obstructing an officer, falsifying or destroying records, or failing to comply with a decision or order (first offence), $2,000; 2) contravention to the Act or regulations not likely to cause injury (first offence), $10,000; 3) contravention to the Act or regulations which may cause injury (first offence), $50,000; and 4) contravention causing serious injury or death, $300,000.

- Create a Farm Health and Safety Council to give advice to the Minister concerning the unique health and safety concerns of farmers and farm workers.

- Enable the director to forward information about an employer's diligence, level of co-operation, number of contraventions, etc. to the Workers' Compensation Board for the purpose of improving occupational health and safety.

- Limit the circumstances under which a medical examination can be conducted pursuant to the Act, and specify these must be carried out with the consent of each worker.

- Provide that, in a prosecution under the Act, a company would be deemed responsible for the act of its manager, agents, representatives, officers, directors and supervisors.

- Extend the time limit for commencing a prosecution from six months to two years.

- Ensure the inspection, investigation and search provisions of the Act comply with the requirements of the Charter of Rights and Freedoms.

This Act, which will repeal and replace the Occupational Health and Safety Act, or any of its provisions will come into force on a date or dates fixed by proclamation.

B. Safety in High Risk Industries

The **federal government** adopted the Newfoundland Offshore Petroleum Drilling Regulations under the Canada-Newfoundland Atlantic Accord Implementation Act. This regulation sets out the requirements that operators must follow if they wish to undertake drilling activities in the Newfoundland offshore. It ensures that all measures affecting the safety of human life, the prevention of pollution of the natural environment and the conservation of hydrocarbon resources meet stringent standards before approval to drill is granted. Stringent standards are set concerning design, construction and operation of drilling units, as well as the drilling procedures and well evaluation. The provisions include requirements such as the setting of steel casings, the mounting of blowout preventers, the alert and evacuation procedures for natural hazards such as ice and the contingency plans for hazardous occurrences such as fires and blowouts as well as other matters affecting the security and effectiveness of the drilling operation. This regulation is modelled on the Canada Oil and Gas Drilling Regulations, which ceased to apply to the Newfoundland offshore area when the Canada-Newfoundland Atlantic Accord Implementation Act was adopted in 1987.

The federal government also adopted the Revocation of the Stevedores Safety Order under the Canada Labour Code. This order, which was first adopted in 1978 and provided that Part IV of the Canada Labour Code of the time applied "to and in respect of employment in the loading and unloading of ships...", has become redundant in light of an amendment of 1987 to the Code. As a result of the adoption of section 123 (previously section 80) of Part II of the Code, the occupational safety and health provisions of the Code became applicable to stevedores without requiring an order emanating from the Governor in Council.

In **British Columbia**, the Resolution of the Governors - September 8, 1992 - under the Workers' Compensation Act became effective March 31, 1993. This resolution of the Governors of the Workers' Compensation Board extends to the farming industry the application of the Workplace Hazardous Materials Information System Regulation (B.C. Reg.

299/88) and of the Industrial First Aid Regulation (B.C. Reg. 343/79, as amended by 470/83), with the exception of the requirements of Tables 1 and 2. The requirements of Tables 1 and 2 for the presence of first aid attendants having survival first aid certificates on farms falling into the first two categories in each table will apply effective December 31, 1993. The farming industry is defined in B.C. Reg. 434/82 (operations relating to the growing or raising of crops, dairying, poultry raising, egg production, raising of livestock for human consumption, breeding of beef cattle for herd improvement, horticulture, beekeeping, fur farming, and breeding of horses), but does not include "aquaculture".

A Regulation for Agricultural Operations under the Workers' Compensation Act was also adopted in British Columbia. This regulation establishes occupational health and safety provisions for the farming industry. The regulation applies to the farming industry as defined in B.C. Reg 434/82, with the exception of aquaculture. It contains various requirements pertaining to the safety and salubrity of workplaces, hazardous substances, pesticides, confined spaces, personal protective clothing and equipment, tools, machinery and equipment, as well as animal handling.

In addition, an Occupational Safety and Health Regulation under the Railway Act was adopted in British Columbia. This regulation establishes occupational safety and health requirements for workplaces where an employee is engaged in work for a railway. Certain provisions, however, apply only to trains while in operation. The regulation deals with matters such as the occupational safety and health programs and committees, reports and investigations, the right to refuse dangerous work, training and instruction of employees, the Workplace Hazardous Materials Information System, levels of lighting, levels of sound, electrical safety, sanitation, hazardous substances, personal protective equipment, hand tools and material handling, design and construction of rolling stock, first aid, and the safe occupancy of the workplace.

Nova Scotia adopted, on July 24, 1992, the Nova Scotia Offshore Area Petroleum Drilling Regulations under the Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act. This regulation establishes, among other things, provisions respecting the safe operation of offshore oil or gas drilling installations. It provides the conditions under which drilling program authorizations will be issued, including many health and safety requirements, such as the control of hazards, equipment standards, alarm and communication systems and rescue measures.

Ontario recently adopted the Health Care and Residential Facilities Regulation under the Occupational Health and Safety Act. This regulation provides for occupational health and safety in health care and residential facilities. It deals with matters such as notices of accidents, the duty to establish safety measures and procedure, personal protective equipment, ventilation, heating, lighting, restricted and confined spaces, various kinds of equipment including electrical equipment, compressed gas cylinders, ladders and scaffolds, explosive hazards, anaesthetic gases, antineoplastic drugs, flammable liquids, material handling, as well as housekeeping and disposal of waste. This regulation came into force on June 1, 1993.

In October, 1992, Ontario adopted the Mines and Mining Plants Regulation under the Occupational Health and Safety Act. This regulation amends the Mines and Mining Plant Regulation with respect to, among other provisions, mine designs, ground support systems,

power supply for equipment and machinery, blasting, self-propelled underground vehicles, cranes, hoists and other machinery, and eating areas.

Similarly, **Quebec** adopted the Regulation respecting occupational health and safety in mines under the Occupational Health and Safety Act. This regulation sets out occupational health and safety requirements that apply to mines, to certain mining operations such as treatment and processing mills and to buildings, warehouses, garages and plants located at the surface in which work is performed in relation to exploration and extraction of a mineral substance. The regulation deals with various matters such as personal protective equipment, check-in controls, monitoring of work stations, mine rescue teams and equipment, first aid, protection from dangerous or toxic substances, minimum age of workers and registers to be kept and notices to be given in given circumstances. The regulation also contains provisions concerning the fitting-out and the quality of the work environment, safety measures to be taken (such as installing an alarm system, preparing an evacuation plan and staging evacuation drills), the safety of motorized vehicles, hoisting plants and various other equipment and installations, the handling and use of explosives, and establishes special provisions for certain types of work. This regulation came into force on March 17, 1993.

C. Safety in High Risk Processes or Operations

In October, 1992, the **federal government** amended Part XI of the Canada Occupational Safety and Health Regulations, Amendment, under the Canada Labour Code, which prescribes worker safety in confined spaces. New provisions have been added to require consultations with the safety and health committee or representatives in the development of safe entry procedures, to expand the requirement for an initial hazard assessment prior to developing entry procedures, to regulate "hot work" in confined spaces, and to provide for the distribution and retention of records of hazard assessments and entry procedures. A definition of "class of confined space" has been added and the regulation provides that, where a confined space falls into such a class, it usually suffices to undertake a hazard assessment and apply the safety measures adopted for the class in general. In addition, the sequence of the provisions has been rearranged and new headings have been inserted to reflect each distinct requirement in order to make the regulation easier to read and understand.

The regulation makes clear the requirement that an employer must appoint a qualified person to carry out a hazard assessment prior to establishing the required entry and emergency procedures, to determine the physical and chemical hazards which might be present, to identify the tests which must be carried out prior to entry, and to provide a signed written report of the assessment, a copy of which is to be made available to the safety and health committee or representative. However, the hazard assessment need only be carried out for confined spaces which have never been the object of such an assessment. Where such an assessment has been carried out, the qualified person must review the report at least once every three years to verify that conditions existing at the time of the initial hazard assessment have remained unchanged. Further, where a confined space has not been entered, and no entry is scheduled, the review of the assessment report need not be done until entry is planned.

An employer is required to establish, in consultation with the safety and health committee or representative, an entry permit system where reasonably practicable. The object of this

provision is to prevent untrained persons from gaining access to a confined space without proper precautions being taken. It is likely that issuance of permits will not be required in most cases because persons that are regularly required to enter a confined space are considered "qualified" persons.

A new provision requires that no person close off a confined space until a qualified person has verified that no person is inside it.

The regulation also provides that, unless a qualified person has determined that the work can be done safely, no hot work can be performed in a confined space that contains an explosive or flammable substance in a concentration in excess of 10 per cent of its lower explosive limit or oxygen in a concentration in excess of 23 per cent. Where hot work is to be performed in a confined space that contains hazardous concentrations of flammable or explosive materials, a qualified person must patrol the area surrounding the confined space and maintain a fire-protection watch. Specified fire extinguishers must be provided and kept in the immediate vicinity. Where an airborne hazardous substance may be produced by hot work in a confined space, no person can enter or occupy the confined space unless the confined space is purged and ventilated in accordance with the regulation, or the person uses a respiratory device that meets the requirements of these regulations.

The period of retention of specified reports and other records has been increased from two to ten years, to permit detection of adverse effects from exposure to chemicals, dusts or other substances over a longer period of time. To avoid excessive paper storage, machine readable copies may be kept. In the case of entry reports, only those where an alarm sounded during entry or while a person was within a confined space need to be kept for ten years. In all other cases, reports must be kept for a period of two years.

Finally, other existing provisions of the confined space regulation have essentially remained unchanged.

Manitoba amended Man. Reg. 108/88 R in order to provide a blaster safety program, the issuance of blasters' certificates for the specified classes of work, as well as the fees payable to attend the safety program and to obtain an examination or re-examination for a blaster's certificate.

New Brunswick also amended its regulation with respect to blasting operations. New Brunswick Regulation 91-191 was amended to replace the word "powderman" wherever used by the word "blaster". This regulation also requires that where more than one blaster is involved in a blasting operation, an employer must designate one of the blasters to supervise the blasting operation. A special temporary exemption, valid until June 1, 1993, is awarded to blasters who have conducted or supervised blasting operations for a period of six months or more before the coming into force of this regulation in the open mining industry from the new requirement for blasters to obtain a certificate of qualification as a blaster issued under the Apprenticeship and Occupational Certification Act.

In addition, New Brunswick adopted a Code of Practice for Workers Working Alone under the Occupational Health and Safety Act. This regulation requires an employer to establish a code of practice to ensure, so far as is reasonably practicable, the health and safety of an employee who works alone from the risks associated with the work assigned. Among the

information that the code of practice must contain are the requirements for an employer to provide any equipment for the protection of the employee and to provide training with respect to the code of practice. Where there is an inconsistency between a code of practice and any regulation, the regulation prevails to the extent of the inconsistency.

Prince Edward Island amended its Occupational Health and Safety Regulation to provide that the Minister may establish classifications for operators of hoisting apparatus, establish a Board of Examiners to examine candidates for the various classifications, issue certificates of qualification, and determine fees payable for examinations and certifications. This regulation came into force on July 17, 1993.

Quebec adopted a Regulation respecting concrete pumps and distribution masts under the Act respecting occupational health and safety, which establishes the standards for the manufacture, installation and use of equipment used to pump concrete. It also regulates the supply, sale or leasing of such equipment, as well as its testing, inspection, repair and maintenance.

Saskatchewan adopted a Radiation Health and Safety Regulations under the Radiation Health and Safety Act. This regulation establishes, among other things, the permissible dose limits to radiation from ionizing and non-ionizing sources for both workers and others persons. The regulation clearly puts the onus on the owner of the radiation emitting equipment to control its use and to report on excessive exposure of workers to the Radiation Safety Unit of the Saskatchewan Department of Human Resources, Labour and Employment and/or to the National Dose Registry of Health and Welfare Canada. Part 11 of the regulation deals with ionizing radiation, such as radiation from external sources (i.e. ionizing radiation installations and any radioactive substance associated with operations licensed under the Atomic Energy Control Act (Canada)), from all radioisotopes ingested or inhaled in the course of employment, as well as from inhaled radon daughters and thoron daughters. Part III of the regulation deals with non-ionizing radiation, such as ultraviolet radiation, including from suntanning equipment used in commercial tanning salons, lasers, laser scanners and laser light shows, ultrasound equipment, and microwave radiation. With respect to ionizing radiation, the owner of equipment emitting such radiations must ensure that occupational workers are exposed to as low an effective dose as reasonably achievable with economic and social factors taken into consideration. The effective dose must not exceed an average of 20 mSv per year on the whole body during a period of five consecutive years, and must not exceed 50 mSv in any one year. Other dose limits are specified in relation to specific body parts, and to the level of exposure at which monitoring and reporting is required. Where an occupational worker reports to the owner of the equipment that she is pregnant, the owner must make arrangements to ensure that the effective dose equivalent received by the pregnant worker at the surface of the abdomen does not exceed two mSv during the remainder of the pregnancy.

With respect to non-ionizing radiation, occupational exposure limits are established for ultraviolet radiation, ultrasound and microwave radiation. Emission limits are set for laser scanners. In addition, the owner of specified classes of laser devices must ensure that no part of the body of any person is exposed to the direct beam of the laser except under strictly controlled circumstances. The regulation makes note of the fact that suntanning equipment, laser scanners and microwave ovens sold in Canada must meet the requirements of the Radiation Emitting Devices Act (Canada), and that this regulation imposes essentially the same requirements on the use and operation of such devices.

In the case of both ionizing and non-ionizing radiation, the regulation specifies other owner responsibilities, such as ensuring the equipment is properly shielded, inspected and maintained, providing proper labelling of equipment, installing warning signs in conspicuous places and ensuring that occupational workers are trained in the proper use of the equipment. In some cases, the operators of the equipment must be members of specified professional associations, or must work under the close supervision of a doctor or dentist. Finally, the regulation requires lasers and laser scanners to be classified in accordance with International Electrotechnical Commission IEC Standard, Publication 825, first edition, 1984, entitled "Radiation safety of laser products, products, equipment classification, requirements and user's guide".

This regulation, which was published in Part II of the Saskatchewan Gazette as R.R.S., Ch. R-1.1, Reg. 1, came into force on February 9, 1993.

D. Miscellaneous

Alberta proclaimed parts of the Safety Codes Act, described in the 1991-92 edition of the *Highlights of Major Developments in Labour Legislation*. Section 1, which deals with the interpretation of the Act, and sections 16, 17, 18, except for clause b), 19 and 20, which deal with the establishment of the Safety Codes Council, came into force January 27, 1993, in anticipation of the proclamation of the remainder of the Act. The Safety Codes Act may be found under the reference: Chapter S-0.5, Statutes of Alberta, 1991.

Alberta recently amended this Act by way of the Safety Codes Amendment Act, 1993. This Act specifies that, in addition to others listed in the Safety Codes Act, no actions lie against "accredited agencies" for exercising functions under the Act, amends the criteria for the selection of the members of the Safety Codes Council, determines the expenses that may be paid to the members of the Council while travelling, establishes certain powers of the Council with respect to spending and the charging of fees. Section 3 of this Act, respecting the selection of Council members, came into force on September 1, 1993. The remainder of the Act is to come into force upon proclamation.

Ontario amended its Workplace Hazardous Materials Information System Regulation under the Occupational Health and Safety Act (Regulation 860 of R.R.O. 1990) in order to include at section 19 a reference to an appeal board established under the subsection 43 (1) of the Hazardous Materials Information Review Act (Canada), and to add, at section 20, a second subsection which specifies that a label or material safety data sheet relating to a product for which a claim for an exemption from disclosure has been made must nonetheless meet the requirements of the WHMIS Regulation, excluding the information for which the exemption is sought.

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HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

August 1, 1993 to July 31, 1994

I. EMPLOYMENT STANDARDS

A. Proclamations and Repeals

Alberta has repealed its *Industrial Wages Security Act*, effective December 2, 1993. This Act provided for the payment by an employer to the Minister of Labour of securities to cover the wages of employees engaged in the performance of public works. Notwithstanding the repeal of the Act, the Minister must retain any security held at the time of the repeal until the expiry of the period during which a claim may be made against it or, where a claim has been made, a final decision disposing of the claim is rendered.

Saskatchewan proclaimed in force Bill 38, *An Act to amend the Saskatchewan Human Rights Code* (S.S. 1993, c. 61), effective July 15, 1993. This Act added sexual orientation and family status to the list of proscribed grounds for discrimination in matters related to employment.

B. Legislation of General Application

Alberta gave royal assent to Bill 4, the *Employment Standards Code Amendment Act, 1994* on May 2, 1994. The Act permits the Director of Employment Standards to engage persons to perform services for and otherwise assist the Director and officers in administering the Code. It also provides for the recovery of all or part of the costs related to the administration of the Code. The Director is authorized, by regulation, to charge fees for such things as conducting employer audits, the filing of complaints, applications and appeals, the investigation and mediation of complaints, the issuing of documents, and the filing, registering, and enforcing of orders. In addition, the Act provides that an officer with whom a complaint is lodged, may refuse to accept or investigate it if the officer considers that the complaint is frivolous or vexatious, that there is insufficient evidence to substantiate the complaint, or that there are other means available to the employee to deal with the subject-matter of the complaint which must be pursued before the complaint is accepted or investigated. The officer may also refuse to deal with a complaint if the employee is proceeding with another action or has sought and obtained a recourse before a court, a tribunal, an arbitrator, or another form of adjudication. An appeal of an officer's decision may be lodged with the Director, whose decision is final and binding. The Act deems directors and officers of a corporation that has committed an offence guilty of the offence, if they have not actively opposed or tried to prevent it. Finally, the Act increases the maximum amounts of fines payable by a person guilty of an offence, from $10,000 to $100,000 in the case of a corporation, and from $5,000 to $50,000 in the case of an individual. This Act will come into force on a date fixed by proclamation.

British Columbia adopted the *Employment Standards Amendment Act, 1993*. This Act amends the *Employment Standards Act* to, among other things, make it clear that where certain provisions of a collective agreement concerning a particular matter, when considered together, do not meet or exceed the minimum requirements of the Act respecting the same matter, the provisions of the Act are considered to be incorporated in the collective agreement and the grievance procedure is deemed to apply for the resolution of any dispute concerning the application or interpretation of the provisions in question. This Act permits minor variances with specified provisions of the *Employment Standards Act* if, on the whole, the variances meet or exceed the requirements of the Act. However, any agreement to waive a

requirement of the Act is void if it does not fall within this exception. The Director of Employment Standards must be notified of such variances at the time of the filing of the collective agreement. These provisions came into force on January 1, 1994, or on the date, not later than April 1, 1994, set out in an order of the Director or his/her representative, made upon a joint application of the parties to a collective agreement to delay their coming into force.

The Act amends the hours of work and overtime pay provisions to allow for regular patterns of work scheduling under collective agreements that provide for averaging of hours of work over not more than eight consecutive weeks, pattern which must repeat itself over a period of at least 26 weeks. These provisions came into force on January 1, 1994.

The Act provides that an employee who is covered by a collective agreement and who is laid off on an individual termination may choose to be paid any severance pay under the collective agreement or to maintain his or her recall rights under the collective agreement. Where an employee does not make the choice between the severance pay or the recall rights, the employer must pay the amount of the severance pay in trust to the Director at the expiry of the 13th week following the lay off. The sum is paid to the employee who renounces the right to be recalled or if the recall period expires, or is remitted to the employer if the employee accepts employment made available under the right of recall. An employee who accepts severance is deemed to lose his or her recall rights, and an employee who accepts employment made available under the right of recall is deemed to have abandoned the right to severance pay. These provisions are deemed to have come into force on June 28, 1993, and are retroactive to the extent necessary to give them effect on that date.

The Act also provides that an employee terminated as part of a group of 50 or more employees must receive either the severance pay (i.e. pay in lieu of notice) or the greater of:
a) the total of the individual notice of termination plus the group notice of termination; or
b) the notice required by an applicable collective agreement. Where an employee continues to be employed after the expiry of the notice period, the notice has no effect. These provisions are deemed to have come into force on June 28, 1993, and are retroactive to the extent necessary to give them effect on that date.

Certain other provisions of this Act, which incorporate references to the Labour Relations Code and the Labour Relations Board to reflect their change of name, came into force on August 31, 1993, by a proclamation contained in B.C. Reg. 277/93 published in the *British Columbia Gazette*.

Newfoundland adopted the *Labour Standards Regulations, 1993* under the *Labour Standards Act*, which repealed and replaced the *Labour Standards Regulations, 1988*, effective for the most part October 15, 1993. This regulation re-enacts most of the provisions of the former regulation.

There are, however, some substantive changes, the most salient of which is the adoption of a standard workweek of 40 hours for all employees, replacing provisions establishing standard working hours of eight in a day and 40 hours per week for "assistants" (i.e. shop employees), and 44 hours per week for other employees. This amendment came into force on December 31, 1993.

Consequential amendments provide for the repeal of the definition of the term "assistant", and the replacement of that word wherever it appeared in the regulation by the term "employee" and the amendment of minimum call-in pay provisions to apply to all employees, instead of only to "assistants" as provided in the previous regulation.

Weekly rest day and rest periods provisions have been amended to specify that they do not apply to, in addition to the previously established exceptions, employees working alone and in circumstances where it is impracticable for such an employee to take a rest period.

The minimum wage rate and the minimum overtime rate remain unchanged. However, overtime provisions have been amended to clearly establish that, with respect to live-in housekeepers or babysitters, only those that work under an arrangement by which they are entitled to time off with pay in lieu of overtime are excluded from the overtime pay provisions.

The provisions concerning the maximum deductions for room and board, as well as those concerning the furnishing and maintenance of uniforms or special apparel have been repealed.

Finally, the exemptions from the notice of group termination provisions of the Act have been amended to include the situation where an employer transfers, assigns or conveys an undertaking to another employer or firm, and the undertaking, along with the employment of employees, is continued and uninterrupted.

Ontario has adopted a *Regulation to amend the General Regulation* under the *Employment Standards Act*, in order to provide minimum employment standards for homeworkers. Previously, homeworkers were excluded from hours of work, minimum wages, overtime pay and paid public holidays provisions of the *Employment Standards Act*. This regulation revokes those exclusions, and fixes a minimum wage rate for homeworkers of 110 per cent the general minimum wage rate, or $7.37 per hour at present. This rate applies to all homeworkers, including to a student under 18 years of age who works not more than 28 hours in a week or during a school holiday. In addition, the regulation provides that the employer must advise the homeworker in writing of the type of work he or she is being employed to perform and of the basis on which the homeworker is to be remunerated. If the employer requires a specific number of articles or things to be manufactured by the homeworker within a certain period of time, the employer must advise the homeworker in writing of the number and the date or time.

Saskatchewan recently adopted Bill 32, the *Labour Standards Amendment Act, 1994*, which contains the following changes:

Protection and benefits for part-time workers

An employer who provides a non-statutory benefit to employees who work 30 hours or more per week is required to provide that benefit to employees who work less hours, on a pro-rated basis. The definition of "eligible employee" and "benefits" and issues concerning the pro-rating of benefits, equivalent benefits and statutory exemptions, will be addressed by regulation following the receipt of the recommendations of the Joint Commission on Benefits and Hours of Work for Part-time Workers. (The government has proposed that this provision apply to organizations with more than 20 employees.)

Where required by regulation and where no other agreement exists respecting the distribution of work, an employer must "offer to part-time workers, in accordance with their length of service and qualifications, any additional hours of work that become available", except in an emergency. (The government has proposed to establish by regulation that this provision apply to organizations with more than 50 employees.) An employer cannot discipline an employee who refuses to work additional hours under these circumstances. The definition of "additional hours" as well as statutory exemptions and the use of employer discretion when allocating additional hours will be addressed in regulations following the receipt of the report of the Joint Commission.

Public holiday pay is extended to all employees and must be calculated on a pro-rated basis in the case of other than salaried employees. The minimum sum to be paid to employees who do not work on a holiday is a sum equal to their regular salary, where they are paid a salary, or one-twentieth (1/20th) of the wages earned in the four weeks preceding the holiday, in any other case. The minimum sum to be paid to salaried employees who work on a holiday is a sum equal to one day's salary plus 1.5 times their regular salary for each hour worked. Other employees who work on a holiday are entitled to be paid one-twentieth (1/20th) of the wages earned in the preceding four weeks, plus 1.5 times the hourly rate of wages for each hour worked. "Wages" includes annual holiday pay for any vacation time that may have been taken within the four weeks preceding the public holiday.

Similarly, pay in lieu of notice for lay-off or discharge must be calculated on the basis of the average weekly wage earned in the previous 13 weeks.

The Act makes clear that the provisions of the *Pensions Benefits Act, 1992* governing pension entitlement will prevail over those of the *Labour Standards Act*. (Amendments to the *Pensions Benefits Act*, which provided part-time workers with increased access to pension benefits, came into force on January 1, 1993.)

Maternity and other family-related leaves

The qualifying period for maternity leave is reduced from 52 to 20 weeks. A pregnant employee who is currently employed and has accumulated a total of 20 weeks of employment with the same employer during the 52 weeks preceding the commencement of the leave is entitled to 18 weeks of maternity leave.

This Act makes clear that an employee who suffers a miscarriage or still birth, as well as a pregnant employee who must cease work immediately for medical reasons, is entitled to immediate maternity leave. The employee must provide the employer a medical certificate attesting to the circumstances in which the leave was taken within 14 days of the commencement of the leave.

Where the pregnancy of an employee would unreasonably interfere with the performance of her duties, the employer may, if no opportunity exists to modify her duties or reassign her to another job with no loss of wages or benefits, require her to commence her maternity leave at any time within 13 weeks prior to the estimated date of birth. The onus is on the employer to prove that the pregnancy would unreasonably interfere with the employee's duties and that no opportunity exists to modify her duties or to reassign her to another job.

A parental leave of up to 12 weeks is available to any employee (both parents can qualify) who is currently employed and has accumulated 20 weeks of employment with the same employer during the 52 weeks preceding the commencement of the leave. An employee who wishes to take maternity and parental leave must take the two leaves consecutively. The Act repeals the six weeks of paternity leave.

An adoption leave of up to 18 weeks (up from six) is available to an employee who is to be the primary caregiver of the adopted child, is currently employed and has accumulated 20 weeks of employment with the same employer during the 52 weeks preceding the commencement of the leave.

In the case of all the leaves discussed above, the Act requires the employee to apply for the leave at least four weeks prior to the date on which it is to commence. Special provisions apply if the employee is unable to comply with this provision.

The Act provides for the accrual of seniority, the continuance of recall rights and the right to continue to contribute to, and to participate in, a benefit plan throughout the period of maternity leave, parental leave or adoption leave. Consequently, benefit plans that do not presently allow for the continued participation of employees on leave must be modified within three years of the coming into force of this Act.

Temporary lay-off notice

No employer can lay-off or discharge an employee with 13 consecutive weeks of service or more because of a shortage of work without giving that employee one week's notice for each year, or fraction of a year, of employment, to a maximum of 10 weeks' notice. However, the period of notice may be altered by regulation. A lay-off is defined as a temporary termination for a period exceeding six days. A year of employment is a period of 52 consecutive weeks during which the employment is not broken by a period greater than 13 consecutive weeks (up from 14 days).

An employer cannot adjust an employee's wages downward after having given a notice of lay-off to that employee. In addition, the employer must make staged payments to the employee of the amount owed as pay in lieu of notice in accordance with the regular pay schedule during the first 30 days of lay-off. After 30 days, the employer must pay to employee any balance owing. Where a laid-off employee is called back to work within the period of notice, the pay in lieu of notice must be reduced by the amount of wages earned by the employee during the remaining period of notice.

Protection against arbitrary dismissals

An employee terminated without just cause is entitled to two weeks' notice, where employed less than one year, or to four weeks' notice, where employed one year, but less than two. An employee is entitled to one additional week of notice for every additional year or fraction of a year of employment thereafter, to a maximum of 14 weeks' notice. An employer cannot adjust an employee's wages downward after having given a notice of individual termination to that employee.

The Act prohibits the dismissal of an employee with 13 consecutive weeks of service or more for an absence from work due to serious illness or injury for a period not exceeding 12 weeks in any 52 week period. This period is extended to 26 weeks where the employee is receiving compensation pursuant to the *Workers' Compensation Act*. In the case of minor illnesses or injuries, the employer cannot dismiss an employee for absences not exceeding a total of 12 days in a calendar year, except where the employer can demonstrate that the employee has a record of chronic absenteeism and that there is no reasonable expectation of improved attendance.

Where an employee becomes disabled and the disability would unreasonably interfere with the performance of his or her duties, the employer must, where reasonably practicable, modify the duties or reassign the employee to another job. The onus is on the employer to prove that it is not reasonably practicable to modify the employee's duties or to reassign him or her to another job.

New whistleblowing protection

The illegal dismissal provisions of this Act protect employees from discharge, threat of discharge, or from any discrimination for reporting any illegal activity at work (for which, upon conviction, a fine or imprisonment is prescribed), or for testifying or participating in any proceeding. This protection extends to whistleblowing activities relative to this Act, any other Act of the province, and any Act of the Parliament of Canada. However, this protection does not apply where the actions of an employee are vexatious.

New notice of group termination

Where 10 or more employees are to be terminated within a four week period, the employer must give to the minister, each employee and any trade union representing employees affected, a notice of termination. The length of notice will be established by regulation. (The government has proposed that the period of notice vary from four to 12 weeks according to the number of employees terminated.) The notice period runs concurrently with the required notice of individual termination or lay-off. The notice must contain information concerning the number of employees affected, the effective date or dates of their terminations and the reasons for the terminations.

Hours of work and time off

Employers are required to provide notice to employees of when work begins and ends over a period of at least one week or, where work is done in shifts, when each shift begins and ends, as well as when each meal break begins and ends. Except in certain cases, the notice must be in writing and may be given by posting notices in a conspicuous place. In addition, the employer must give at least one week's notice of changes to the employee's work schedule.

The Labour Standards Director may, upon written application from the employer and the employees or their representative or trade union, give authorization to vary the above notice requirements. An automatic exemption is granted when sudden or unusual occurrence or condition arises that could not have reasonably been foreseen by the employer.

Employers must schedule hours of work in a way that provides each employee with a rest period of at least eight consecutive hours in any 24-hour period, except in an emergency. An employee is entitled to refuse to work, free of disciplinary action, where the work schedule does not permit this.

Each employee is entitled to a meal break of at least one-half hour after each consecutive period of six hours of work. Where a majority of employees agree, the Director may authorize alternate arrangements to be made. Similarly, an exemption may be awarded where the employer obtains the written consent of the union.

An amendment to the averaging of hours of work provisions requires that where the Director grants an averaging permit, he or she must determine when the employer is required to pay the overtime rate to the employees.

The Minimum Wage Board may make regulations requiring employers to provide free transportation home to any employee or class of employees who finish work between 12:30 a.m. and 7:30 a.m. Previously, this provision applied to female employees only.

Annual vacations with pay

The Act makes clear that the calculation of annual holiday pay is based on total wages (i.e. gross wages, overtime pay, unpaid wages, the cash value of board and lodging received as part payment of wages, etc.) earned in the year preceding the time the vacation became due.

Where the employer cancels or postpones an employee's annual holiday scheduled at a time previously agreed to, the employer must reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement.

Full coverage of the Act to homeworkers

The Act clarifies that employees who work out of their homes are covered by the *Labour Standards Act*, and that the location of the workplace is not relevant in determining whether an employer-employee relationship exists. Employers must maintain records setting out the name of homeworkers, their address, and the portion of the labour or services performed at home.

Extended bereavement leave

The Act extends the definition of "immediate family" to include a grandparent, and redefines "spouse" as a the wife or husband of an employee, or a person with whom an employee has cohabited as spouses: a) continuously for a period of not less than two years; or b) in a relationship of some permanence, if they are the parents of a child.

Leave of absence to seek nomination and election

Every employer must grant, upon application, a reasonable leave of absence to an employee to seek nomination as a candidate and to be a candidate in a municipal, provincial or federal election, or for election at a school board or district health board. Previously, such leave was

not available for school board or district health board elections. Upon the expiration of the leave, the employer must allow the employee to continue his or her employment without the loss of any privilege connected with seniority accrued at the date the leave began.

Administration and enforcement of the Act

The procedure for serving third party demands is clarified and a mechanism for their collection is provided. Certain criteria, to be met before a third party demand may be served, are established. The Act specifies that the serving of a third party demand binds any debt due by the third party to the employer when the demand is served or accruing due while the demand is in force, to the extent set out in the demand. These sums must be diverted to the Director by the third party. The Director may reissue a third party demand, or the 90 day period during which the demand is in force may be extended if the Director is satisfied that the debt will be paid within a reasonable time.

Wage assessments under the *Labour Standards Act* may include overtime, annual holiday pay, public holiday pay and pay in lieu of notice as well as other monies owing resulting from certain monetary losses or expenses incurred that are compensable under the Act. The Labour Standards Director is empowered to issue a wage assessment against an employer, where the Director knows or has reason to believe that the employer has failed or is likely to fail to pay wages. The Director may also issue a wage assessment against a corporate director, where the corporate director is liable for wages. Wage assessments may be amended or be revoked, if necessary, by the Labour Standards Director. Employers or corporate directors have the right to appeal a wage assessment within 21 days after the date of being served the assessment.

The employer or corporate director against whom a wage assessment is made is liable to pay the expenses incurred in the administration of the wage assessment, if the assessment is not appealed or if it is upheld on appeal. Regulations will prescribe a fee reflective of the number of times wages are assessed against an employer. (Proposed fees are 20 per cent of the administrative costs of collecting a first wage assessment, 100 per cent of the costs of collecting a second wage assessment and 200 per cent of the costs of a third or subsequent assessment.)

This Act specifies that the Labour Standards Director has the right to represent employees in any proceeding pursuant to this Act or pursuant to any other Act of the province or an Act of the Parliament of Canada and requires that the Director act in a reasonable manner in exercising those powers. The Director is also empowered to negotiate settlements on behalf of an employee, where there is a considerable advantage to do so and the employee requests it, or where the employer produces evidence that satisfies the Director that full settlement of unpaid wages will lead to the cessation of the employer's operation. However, in the latter case, a settlement cannot be made for less than the amount for which corporate directors would be liable pursuant to the *Labour Standards Act* (up to six months' wages).

The time limit to file a claim for unpaid wages pursuant to the Act is one year from the date the wages became payable. A prosecution under the Act may not be commenced after the expiration of two years from the date of the commission of the alleged offence.

The Act clarifies that the standards imposed by the *Labour Standards Act* are minimum requirements, and that more generous terms provided by contract, agreement or regulation prevail over those of the Act and, inversely, that the terms of the Act are deemed to be incorporated in current collective agreements where they contain less generous terms.

Wherever authorization is sought from the Director to vary a standard in accordance with the Act, the Director may require a vote by secret ballot to determine if the majority of employees are in agreement with the proposed variation.

This Act increases the maximum penalty for a first offence to an amount not exceeding $2,000 (up from $200). The fine for a second offence within six years of the first is increased to $5,000 (up from $500), and the fine for a third offence within six years of the second is established at $10,000. Imprisonment is no longer a consequence of the failure to pay a fine.

A new adjudication and appeals system

Where an appeal of a wage assessment is lodged, an adjudicator must be appointed from a list established following consultations with business and labour. The adjudicator has the same powers as a commissioner appointed pursuant to the *Public Inquiries Act*, in addition to those set by the *Labour Standards Act* and regulations. A decision of an adjudicator may be appealed to the Court of the Queen's Bench and the Court of Appeal only on a question of law or jurisdiction.

This Act will come into force on a date fixed by proclamation.

C. Minimum Wages

Ontario has raised its minimum wage rates in accordance with the announcement reported in last year's issue of the *Highlights of Major Developments in Labour Legislation*. A regulation amending the *General Regulation* under the *Employment Standards Act* became effective January 1, 1994. The general rate has been increased from $6.35 to $6.70 an hour. This represents a 5.5 per cent increase. The rate payable to students under 18 employed for not more than 28 hours a week or during a school holiday has been raised to $6.25, whereas employees serving alcoholic beverages are entitled to $5.80 per hour.

Quebec has raised its minimum wages on October 1, 1993, by amendment to the *Regulation respecting labour standards* under the *Act respecting labour standards*. The general minimum wage was increased from $5.70 to $5.85 per hour. The minimum wage rate payable to employees who usually receive gratuities was raised from $5.00 to $5.13 per hour, and that payable to domestics who live in their employer's home from $221 to $227 per week.

Quebec has also published a draft regulation announcing its intention to amend the minimum wage provisions of the *Regulation respecting labour standards*, effective October 1, 1994. The general minimum wage will increase to $6.00 per hour, from $5.85. The rate payable to employees who usually receive gratuities will increase from $5.13 to $5.28 per hour and that payable to domestic workers who reside in their employer's home will increase from $227 to $233 per week, effective on the same date.

D. Fair Wages

British Columbia adopted the *Skills Development and Fair Wage Act*, which applies to all publicly funded construction projects in the province. However, some exceptions respecting types of construction work and the worth of a contract can be made by regulation. Its purposes are to ensure skill development training in the construction industry, ensure high quality work standards by requiring that employees hold the appropriate qualifications and ensure employees receive fair wages for work performed on publicly funded construction projects.

The Act requires every project to which it applies to meet a certain number of requirements, including requiring most trade workers to hold the appropriate certificate of apprenticeship, a certificate of qualification or a Red Seal Program certificate. It requires every contractor or subcontractor to comply with this Act and, among other things, pay fair wages to their workers in accordance with the regulations and keep records on their workers' qualifications, rates of pay and hours of work.

Fair wages under this Act are deemed to be wages for the purposes of the *Employment Standards Act*, and the collection, review and appeal procedures of that Act apply as if they were incorporated in this Act. In addition, the Labour Standards Director may make orders requiring compliance with a particular section, or to remedy or cease doing an act. A person who commits an offence under this Act is liable to a fine not exceeding $10,000.

Regulations may be made, among other things, establishing fair wages and the method of calculating those rates, governing the procedures to be followed in the execution of contracts with tendering agencies, prescribing standard provisions to be included in those contracts and governing exemptions from any or all provisions of this Act.

Several acts are amended by this Act, including the *Drainage, Ditch and Dykes Act*, the *Ministry of Transportation and Highways Act*, and the *Municipal Act*. In addition, the *Wage (Public Construction) Act* is repealed. This Act will come into force by proclamation.

E. Sunday Shopping

Nova Scotia adopted on November 25, 1993 *An Act to Amend Chapter 402 of the Revised Statutes, 1989, the Retail Business Uniform Closing Day Act*. This Act permitted retail businesses to be open on Sundays between noon and 8:00 p.m. from October 1, 1993 to December 31, 1993, except on Boxing Day. Notwithstanding any lease or agreement, no owner or operator could be forced to open on those days. Similarly, notwithstanding any contract of employment or agreement, no person could be forced to work on those days. The Act prohibited retaliation against any person who refused to operate a retail business or to work on any of the Sundays in question. In addition, a municipality or municipal council could not prohibit or restrict the operation of retail businesses on those days. This Act came into force retroactively to October 1, 1993.

Ontario gave royal assent to *An Act to amend the Retail Business Holidays Act in respect of Sunday Shopping* on July 29, 1993. This Act, which had received first reading on June 3, 1992, removes "Sunday" from the list of holidays under the *Retail Business Holidays*

Act, and adds "Easter Sunday" to that list. It repeals section 4.4 of the Act, which provided for the opening of retail establishments on Sundays in December. This Act also provides that a provision in a lease or other agreement that has the effect of requiring a retail business establishment to remain open on a holiday or on a Sunday, whether or not the Sunday is a holiday, is of no effect even if the lease or agreement was made before this Act was given royal assent. This Act is deemed to have come into force on June 3, 1992.

Prince Edward Island recently adopted the *Exemption Regulations* under the *Retail Business Holidays Act*. This regulation exempts tourism related businesses from the obligation to close a retail business on holidays and Sundays, if the operator has paid all requisite charges under the *Tourism Industry Act*. These businesses remain, however, subject to regulations made under the *Liquor Control Act*. This regulation is deemed to have come into force May 19, 1994.

F. Pay Equity

Ontario adopted a new regulation under the *Pay Equity Act*. The *Regulation respecting Limitations on Maintaining Pay Equity* provides that where the compensation for a male job class that is being used as the basis for job-to-job comparisons is increased as a result of a decision of an arbitrator, board of arbitration or other tribunal other than a decision that results from the failure of the parties to reach an agreement in the course of negotiations, the requirement to maintain pay equity for any female job class is limited as follows. The employer may declare that the male job class for which the compensation has been increased shall no longer be used for comparison with the female job class in the pay equity plan. To do so, the employer must, within 30 days of the decision, give written notice of the declaration to the bargaining agent for the female job class. The increase in compensation consequently does not apply to the female job class, nor do any retroactive increases in pay resulting from the decision.

Within 90 days of the declaration, the employer and the bargaining agent must negotiate a new comparison for the female job class using the job-to-job or the proportional value methods of comparison. If the parties cannot agree on a new comparison within the 90-day period using one of these methods, they must use either a male job class that had previously been identified in preparing the pay equity plan as being of equal or comparable value, with a rate of pay that was the same as the former male job class, or the male job class previously identified with the nearest higher rate of pay to the one of the former male job class.

If the parties are not able to make a comparison by using one of the above alternatives, they must negotiate a comparison using the proportional value method of comparison, and Part III.1 of the Act applies with necessary modifications.

This regulation does not apply in such a way as to reduce the compensation paid to the female job class. This regulation came into force on September 1, 1993.

Prince Edward Island adopted *An Act to Amend the Pay Equity Act*. This Act was introduced on August 6, 1993, to replace Bill 5, by the same title, which had been introduced on June 22, 1993 and was left to die on the order paper. It modifies the implementation date in respect of pay equity adjustments for hospital employees and employees of the University

of Prince Edward Island. For these two sectors, implementation of Stage IV of the pay equity process is deemed to have commenced on January 1, 1993. The Act has enabled the negotiation of a resolution, announced September 24, 1993, to an outstanding pay equity dispute involving hospital employees that had been brought to arbitration.

G. Employment Equity

Ontario proclaimed in force the *Employment Equity Act, 1993*, effective September 1, 1994.

Object

This Act provides various measures to achieve employment equity by giving employers in Ontario a framework to:

- remove barriers to employment and advancement in the workplace;
- promote equal opportunities and treatment; and
- help to make the most out of human resources by using the skills and capabilities of all people of Ontario.

In particular, the object of this Act is to correct systemic and overt discrimination experienced by aboriginal people, people with disabilities, members of racial minorities, and women. The application of objective standards governing hiring practices and employment opportunities, such as those set out in this Act, are required as positive measures to establish a better equilibrium in the levels of representation of these groups in all areas of employment, especially in senior and management positions where they are under represented.

Principles

The five principles that govern employment equity are contained in Part I of the Act, and are as follows:

- members of the designated groups have the right to be considered for employment, hired, retained, treated and promoted for jobs in a way that is free of discrimination and barriers;
- every employer's workforce, at each level and in each job category, must reflect the composition of the community;
- every employer must make sure that workers are treated in a way that is free of systemic (indirect) and deliberate barriers;
- every employer must put in place positive measures to help recruit, employ, retain and promote members of the designated groups;
- every employer must put in place supportive measures that will help recruit, employ, retain and promote members of the designated groups, and benefit the workforce as a whole.

Application

Part II of the Act defines the terms "employer", "employee", and other terms used in the legislation, and identifies the designated groups. It also describes the classes of employers covered by the Act. **Not** covered by the Act are the following:

- employers in the broader public sector (such as municipalities, school boards, universities and the health care system) with fewer than 10 employees;
- employers in the private sector with fewer than 50 employees;
- Police forces covered by the *Police Services Act* (which has its own regulation requiring employment equity plans).

Obligations of the Employer

Part III contains the core provisions of the Act. It requires employers to implement employment equity in accordance with an employment equity plan, and to ensure supervisors and staff responsible for recruiting, hiring, supervising, evaluating or promoting employees comply with the Act. The employer must conduct an employment equity workforce survey to determine the extent to which members of the designated groups are employed in his or her workforce. Employees have the right to decide whether to answer the questions asked in the survey. The employer must review his or her employment policies and practices (called an employment systems review) in order to identify barriers to the hiring, retention, treatment and promotion members of the designated groups in a particular workplace. Those barriers can include terms and conditions of employment that have a negative effect on designated groups. Seniority rights contained in a collective agreement or provided by established practice, however, do not constitute a barrier under the *Employment Equity Act*. Other seniority rights may be determined to be a barrier by a Board of Inquiry established under the Ontario *Human Rights Code*.

The key elements of an employment equity plan, details of which requirements are to be found in the regulations, must provide for:

- how barriers found during an employment systems review will be removed;
- what positive measures will be put into action to help overcome the effects of barriers faced by members of the designated groups. Positive measures could include, for example, training programs, job sharing, and mentoring;
- what supportive measures will be put in place to help designated groups to be recruited, hired, retained, treated and promoted and which may benefit the workforce as a whole (for example, introducing flexible working hours);
- what accommodation measures will be used. Accommodation measures could include, for example, providing appropriate equipment to palliate against specific disabilities;
- goals and timetables for barrier elimination and positive, supportive and accommodation measures. Employment equity plans, developed by the workplace parties, must set targets for each measure and stipulate when each will be introduced and completed;
- goals and timetables for the composition of the workforce. Setting numerical goals for designated group representation in different job classifications is required in order to make the workplace better reflect the community.

An employer may prepare more than one employment equity plan. The plans must cover all of an employer's employees in all workplaces, and must enable the employer to meet the obligations set out in the Act. This provision recognizes the reality that different types of organizations, corporate cultures, workplaces or workforces may exist within a single legal entity, and allows for their continued existence.

The employer must file with the Employment Equity Commission a certificate attesting that a plan has been prepared. The details of what the certificate must contain will be provided by regulation. The Act requires that the Ontario Public Service file its employment equity plan with the Commission. The Commission may exercise discretion whether other employers must file their plan.

The plans must provide reasonable progress toward achieving the principles of employment equity. In addition, every employer must make all reasonable efforts to implement their employment equity plans and to meet the goals and timetables set out in the plans. Employers are required to review and revise their plans every three years, and submit a new certificate to the Commission. Large employers must also provide information on the results achieved during the previous three years.

Joint Responsibilities

The Act requires bargaining agents, where present in a workplace, to assist in the development of an employment equity plan. They must participate in:

- conducting the workforce survey;
- reviewing the employment policies and practices;
- preparing an employment equity plan;
- revising an employment equity plan.

Employers and bargaining agents must carry out their joint responsibilities in good faith and separately from their regular collective bargaining process. Where there are several bargaining agents representing the employees of the same employer, a committee must be established composed of representatives of the different bargaining agents in equal proportion to the representatives of the employer. The committee must coordinate the joint responsibility activities between the bargaining agents and the employer. Employers are required to provide the appropriate information to the bargaining agents concerning any aspect of the development of the employment equity plan. The requirement to provide information excludes, however, providing confidential business information that could harm the employer's competitive position.

Employees not represented by a bargaining agent must be consulted by their employer about the workforce survey, the review of employment policies and practices, and the development and review of the employment equity plan that affects them.

Employment equity plans must be made accessible to all employees affected by them. The employer must post in each workplace a copy of the certificate that has been filed with the Commission, as well as any other information required to be posted by regulation.

Each employer must keep employment equity records for its workforce. The Commission may require from employers any information specified in the regulation. In addition, information obtained by the Commission under this Act remains accessible to anyone under the provisions of the *Freedom of Information and Protection of Privacy Act*.

Exclusions

Some exclusions from the processes established by this Act may be made by regulation. The Act contains regulation-making authority to apply employment equity differently in Aboriginal workplaces. Also, smaller workplaces in the broader public sector and the private sector can be exempted from specific parts of the Act and regulations. However, exemptions granted to those smaller employers will cease to apply if they grow to employ, in the broader public service, 50 employees, or 100 employees in the private sector.

Implementation:

Different timetables are established for various categories of employers for the completion of their workforce survey, review of their employment policies and practices and preparation of their employment equity plan as follows:

- Provincial government ministries and some governmental agencies will have 12 months following the coming into force of the Act;
- Broader public service employers with 10 or more employees and private sector employers with 500 employees or more will have 18 months;
- Private sector employers with 100 or more but fewer than 500 employees will have 24 months; and
- Private sector employers with 50 or more but fewer than 100 employees will have 36 months from the effective date.

New employers must comply within 12 months from the date they begin to exist, or within 18 months time of the coming into force of the Act, if that period is longer. In the case of employers from the broader public service with fewer than 10 employees and employers from the private sector with fewer than 50 employees that grow to exceed those numbers, the adjusted timetables are 12 months from the date that they first come to employ the specified number of employees, or within 18 months of the coming into force of the Act, if that period is longer. Similarly, if regulatory exemptions granted to smaller employers (as outlined above in *Exclusions*) cease to apply, they must comply within 12 months of the date of the cessation, or within 24 months of the coming into force of the Act, if that period is longer.

The Employment Equity Commission

In general, the Commission has the mandate to: advance the principles of employment equity; monitor and assist employers and employees in complying with the Act and in implementing the goals and principles of employment equity; conduct research and develop policies on employment equity; and play an important role as public educator and facilitator in putting into effect employment equity.

The Commission may hold public consultations or hearings and may appoint advisory councils for the province as a whole or on a regional basis in order to further its aims. Each council would include representatives from business, labour and the designated groups.

The Commission may also issue policy directives to guide employers and employees in implementing employment equity. The directives will come into force as they are published in the *Ontario Gazette*.

The Commission must submit a yearly report of its activities to the Minister of Citizenship, who must table it in the Ontario Legislative Assembly, containing statistics and information on the progress made toward achieving employment equity.

The Commission may conduct an audit of an employer to verify if the employer is complying with the Act. The powers of officers of the Commission include entering a workplace and inspecting relevant documents and information as required.

In addition, the Commission and an employer may try to work out a settlement if the Commission feels that improvements are required to comply with the Act. Nonetheless, the Commission has the power to order an employer to take certain steps to achieve compliance if it considers that any of the following circumstances exist:

- the employer has not conducted a workforce survey;
- the employer has not carried out an employment systems review;
- the quality of the employer's employment equity plan is inadequate or the plan is incomplete;
- the employer has failed to file a certificate (or a plan, if required) with the Commission;
- the employer has not consulted with its employees;
- the employer has not posted or provided access to information as required;
- the employer has not established or maintained proper employment equity records;
- the employer has not submitted reports or other information to the Commission, as required.

The Employment Equity Tribunal

Members of the Tribunal are appointed by the Lieutenant Governor in Council. One member must be designated as chair, and one or more members may be designated as vice-chairs. The chair may appoint a panel of one or more members of the Tribunal to conduct hearings as required. The Tribunal can set its own rules of procedure.

The Tribunal must act as a mediator and adjudicator. It reviews and enforces the orders of the Commission. It also adjudicates disputes about joint responsibility and responds to complaints concerning non-compliance.

The employer may appeal any order of the Commission to the Tribunal within 35 days after its mailing. The Tribunal may rescind, vary or confirm the order of the Commission. If the employer does not appeal within the prescribed time limits, the order of the Commission is deemed to be an order of the Tribunal.

The Tribunal has the power to determine, among other things:

- upon an application by the Commission, whether an employer has complied with the Act. However, an employer is deemed not to have complied with Part III of the Act if the employer has not taken the steps required by its employment equity plan or has failed to achieve the goals set out in the plan. To repel this presumption of proof, the employer must prove to the contrary that the plan does indeed comply, and the employer has made all reasonable efforts to implement the plan and achieve the goals under the plan;
- upon the application of any person, whether an employer has failed to implement an employment equity plan or has failed to achieve the goals under that plan. As is the case above, the presumption of proof lies against the employer, and the means to repel it are available to the employer;
- upon the application of a bargaining agent or an employer, whether the other party's joint responsibilities under the Act have been properly carried out;
- whether two or more employers, where they carry on business activities under common control or direction and have employment policies and practices under common control, should be considered a single employer for the purposes of the *Employment Equity Act*;
- whether intimidation, coercion, penalty or discrimination occurred against any person seeking the enforcement of rights under the Employment Equity Act. The Tribunal can consider various remedies, including the reinstatement of an applicant who was dismissed, or rescinding any penalty imposed on the applicant;
- whether a matter brought before it is within its jurisdiction or whether a complaint is trivial, frivolous, vexatious or made in bad faith;
- whether a complaint is justified, and order that: an employment equity plan be established or amended; an employment equity fund be established by an employer; an administrator be appointed, at the employer's expense, to help develop and implement an employment equity plan; a collective agreement be amended, if the Tribunal believes that no other order will be sufficient to ensure compliance with the Act;
- all questions of law or fact that arise out of any proceeding.

Every application that is made to the Tribunal must first be referred to an officer of the Tribunal who may attempt to bring the parties together to effect a settlement. Applications to the Tribunal may be put in abeyance if an audit of the employer is being undertaken by the Commission.

The Tribunal has exclusive jurisdiction over all questions that relate to the *Employment Equity Act* and its decisions are final and binding. However, the Tribunal may, if it considers it advisable, reconsider any decision or order and vary or revoke it.

Offences and Penalties

Offences under the Act include:

- knowingly provide false information on a certificate filed with the Commission;
- hinder or obstruct an employee of the Commission who is carrying out an audit or executing a legal warrant;

- intimidate, coerce, penalize, or discriminate against another person who is exercising or attempting to exercise a right under this Act, is participating or may participate in any proceeding under this Act, has made a disclosure or may make a disclosure required in a proceeding under this Act, or has complied with or may act in compliance with a requirement of this Act.

Any person who fails to comply with an order of the Tribunal, or who contravenes the Act, is guilty of an offence and on conviction is liable to a fine of not more than $50,000. No prosecution for any offence can proceed without the written consent of the Tribunal.

Government Contracts

It is a condition of every contract with the Province of Ontario or a governmental agency that every contractor will comply with the *Employment Equity Act*, to the extent that the contractor has obligations under the Act. Subcontractors must also comply, as must people or organizations that receive grants, contributions, loans or loan guarantees from the Government or its agencies. If the Tribunal rules that these parties have not complied, any contract, loan or loan guarantee can be cancelled, and the Province or an agency may refuse to enter into any further contract, or make any further grant, contribution, loan or loan guarantee to that same person.

Regulations

The Lieutenant Governor in Council may make regulations concerning, among other things:

- definitions of the designated groups;
- how to conduct a workforce survey;
- details on what elements must be included in an Employment Systems Review;
- processes for including bargaining agents and non-unionized employees in the employment equity process;
- the elements of an employment equity plan;
- requirements for certificates, reports and other information required under the Act.

Consequential Amendments

The Ontario *Human Rights Code* is amended to provide that no rights under the Code is infringed because positive measures or numerical goals, that are contained in an employment equity plan prepared under this Act, are restricted to members of the designated groups. Therefore, individuals who believe they have been discriminated against by an employer maintain their rights to have the case considered under the *Human Rights Code* by a Board of Inquiry, and for that Board to order a remedy. The Board, though it cannot amend an employment equity plan, may order action to be taken in addition to the plan. In determining the appropriate remedy, the Board may take into account the cost of implementing an employment equity plan in order not to create undue hardship for the employer.

Review of the Act

The Act calls for a standing or select committee of the Legislative Assembly to undertake a comprehensive review of the Act and its regulations within five years of its proclamation and to make recommendations for amendments.

In addition, Ontario recently adopted five regulations under the *Employment Equity Act, 1993*, which also came into force on September 1, 1994.

The *Regulation respecting Aboriginal Workplaces* establishes variances with respect to the timetable for implementing employment equity in aboriginal workplaces.

The *Regulation respecting the Construction Industry* establishes variances with respect to the timetable for implementing employment equity in the construction industry.

The *Regulation respecting the Agricultural Industry* deems seasonal employees in the agricultural industry not to be employees for the purposes of various parts of the Act. Seasonal employees include those employed under the Commonwealth Caribbean Seasonal Agricultural Workers Program or the Mexican Seasonal Agricultural Workers Program administered by Human Resources Development Canada.

The *Regulation respecting Definitions* defines the words "designated groups", "barrier", "aboriginal workplace" and "construction industry" for the purposes of the *Employment Equity Act, 1993* and its regulations.

The *General Regulation* specifies the details of, among other things, how to conduct a workforce survey and what determinations must be made on the basis of that survey, what is considered in the review of policies and practices with respect to recruitment, hiring, retention, treatment and promotion of employees, how to prepare an employment equity plan and what the plan must contain, what the joint responsibilities of employers and bargaining agents are, how to proceed with consultations of unrepresented employees, which records must be established and maintained and which reports must be submitted and their content and frequency.

H. Proposed Legislation

The **Yukon** has introduced in first reading Bill 30, *An Act to Amend the Employment Standards Act, 1994*, on May 24, 1994. Many of the provisions of this Bill are the same amendments that were included in the *Act to Amend the Employment Standards Act, 1992*, which was not proclaimed. However, it does not contain provisions respecting the application of the Act to the government and its employees, the right to refuse extra hours of work, increased paid vacation time, parental leave and family responsibility leave. In addition, the Bill contains important amendments to the maternity leave provisions and priority of unpaid wages provisions not found in the 1992 Act. Provisions to repeal the 1992 Act are also contained in the Bill.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In Newfoundland, *An Act to amend the Labour Relations Act* (Bill 49) came into force on February 28, 1994. The Act has modified the provisions of the *Labour Relations Act* dealing with votes upon applications for certification and applications to revoke certification. In both cases, it:

- requires a vote upon an application supported by at least 40% of the employees in a bargaining unit (in the case of an application for certification, this requirement does not apply if the trade union and employer concerned jointly request that the Labour Relations Board not take a vote);

- provides that any such vote be taken no more than 5 days after receipt by the Board of the application for certification or revocation of certification (the Board may extend the time for the taking of a vote in exceptional circumstances);

- specifies that the Board is bound by the outcome of a vote, except if it determines that the conduct of the vote has been influenced by intimidation, or any kind of threat or coercion.

With respect to applications for certification, the Act provides that the date of application is the operative date for determining support on the basis of membership records.

In addition, the Act provides for a mandatory vote by secret ballot of the employees in a bargaining unit before they can go on strike. The vote must be conducted in such a way that the employees entitled to vote have ample opportunity to do so.

In New Brunswick, *An Act to Amend the Industrial Relations Act* (Bill 47) took effect on April 20, 1994. This amendment provides that, at any time after the statutory delays relating to conciliation or mediation before strikes or lockouts have been met, the employer or employers' organization may make a written request to the Industrial Relations Board for a secret ballot vote among the employees in the bargaining unit affected on the acceptance or rejection of its most recent offer made during collective bargaining in respect of all matters in dispute between the parties. A similar request may be made by a bargaining agent where an employers' organization is a party to a dispute. The cost of taking the vote must be paid by the party making the request.

A request for such a vote may only be made once during each dispute and not in relation to disputes submitted to binding arbitration or where the parties have agreed to be bound by, or have voted in favour of, the report of a conciliation board.

Also in New Brunswick, the *Labour and Employment Board Act* (Bill 59), which will come into force by proclamation, will provide for the creation of a Labour and Employment Board consisting of a Chairperson, one or more Vice-Chairpersons and an equal number of members representing employers and employees. The Chairperson will be appointed for a term not exceeding five years and the Vice-Chairpersons and the other members of the Board will be appointed for a maximum term of three years. The Chairperson, the Vice-Chairpersons and the other members may be reappointed.

The Board will exercise powers now conferred on the Employment Standards Tribunal under the *Employment Standards Act*, the Industrial Relations Board under the *Industrial Relations Act*, the Pensions Tribunal under the *Pension Benefits Act*, and the Public Service Labour Relations Board under the *Public Service Labour Relations Act*.

In Alberta, the *Labour Boards Amalgamation Act* (Bill 1) was assented to on May 25, 1994, and will come into force by proclamation.

This Act will amend the *Labour Relations Code* and the *Public Service Employee Relations Act*. The most significant modifications include:

- changes to the functioning of the Labour Relations Board which will replace the Public Service Employee Relations Board;

- giving the Labour Relations Board the power to make rules for the charging of fees for services or materials provided by the Board or at the direction of the Board in a proceeding before it or in an application for judicial review of a ruling or proceeding;

- replacing provisions of the *Public Service Employee Relations Act* dealing with such topics as the powers of the Board, certification, revocation of bargaining rights, and grievance arbitration with corresponding provisions of the *Labour Relations Code*; and

- providing that the expenses and remuneration of a mediator or the chairman of a compulsory arbitration board, appointed under the *Public Service Employee Relations Act*, must be paid jointly by the parties.

In Quebec, *An Act to amend the Labour Code* (Bill 116) came into effect on May 19, 1994. This Act has modified the *Labour Code*, among others, to introduce the following changes:

- to allow collective agreements to be concluded for a period of more than three years in enterprises operating in the private sector; and to specify that the term must not be more than three years in the case of a first collective agreement;

- to introduce, for agreements with longer terms, new time periods during which employees may exercise the right to change their union allegiance;

- to repeal the obligation to send certain notices relating to collective bargaining to the Minister (i.e., the notice of meeting in order to reach a collective agreement, and the notice a trade union must give when a vote has authorized it to declare a strike);

- to allow the joining of matters brought before the labour commissioner general when the questions in dispute are substantially the same or could properly be combined;

- to authorize a labour commissioner to order the suspension of negotiations where an issue resulting from the sale or concession of an undertaking must be resolved;

- to permit the Labour Court to summarily dismiss an appeal it considers improper or dilatory;

- to set a time limit for the rendering of judgments by the Labour Court on any matter, and to authorize the chief judge to remove a matter from a judge who fails to render judgment within the prescribed time;

- to extend the definition of public service spelled out in the *Labour Code* to include undertakings that engage in various operations involving putrescible waste; and

- to grant an employer, in a public service, a length of time within which to adapt its operations in view of the cancellation of a strike notice, or a return to work notice following a strike.

In **Prince Edward Island**, *An Act to Amend the Labour Act* (Bill 64) was assented to on May 19, 1994, and will come into force by proclamation. The Act brings a number of changes to the *Labour Act*; the main ones are outlined below.

- The members of the Labour Relations Board will be appointed for a term of up to three years and will be eligible for reappointment for a second term.

- When there is a failure to comply with an order of the Labour Relations Board or one of its panels, the Board will, after being notified of that fact by an affected party, file it in the Supreme Court and the order will become enforceable as if it were a judgment of that court.

- If the negotiation of a first agreement is unsuccessful, once the right to strike or to lock out has been acquired, the Minister will have the power, at the request of either party, to refer the matter to the Board for the settlement of the terms and conditions of the first collective agreement. A first contract determined by the Board will be in effect for at least one year.

- A union, employer or employers' organization will be able to request the Labour Relations Board to resolve a jurisdictional dispute with respect to assignment of work. (The current law enables the Board to do so when a work stoppage is perceived to be imminent.)

- Arbitration fees and expenses will be shared by all parties in the case of an arbitration board appointed by the Minister to resolve collective bargaining issues affecting municipal police officers, fire fighters, employees of hospitals, nursing homes or community care facilities, and non-instructional school personnel.

- New provisions will protect the confidentiality of information obtained or reported in the discharge of their duties by members of the Board or its staff, a conciliation officer, a mediator or a member of a conciliation board.

In **Saskatchewan**, the *Trade Union Amendment Act, 1994* (Bill 54), received royal assent on June 2, 1994. It will come into force by proclamation. Following is a summary of the most important changes contained in this Act.

Collective bargaining and dispute resolution

- A party will be able to make application to the Labour Relations Board for assistance in concluding a first collective agreement and the Board may provide such assistance if the parties have bargained in good faith and failed to reach an agreement, and either a majority of employees participating in a strike vote have voted in favour of a strike, the employer has commenced a lockout, or after making a determination concerning the failure or refusal to bargain collectively, the Board decides to assist the conclusion of a first agreement.

- Following an application, the parties will be required to submit a list of outstanding issues as well as their position and their last offer on those issues. The Board may order them to submit the matter to conciliation if they have not already done so and, upon failure of conciliation, may refer certain terms to arbitration and/or settle terms of the first agreement itself.

- An imposed first agreement will expire two years after its effective date, unless the parties agree otherwise. Within 30 to 60 days before its expiry, either party may serve a notice to revise or terminate such an agreement, and the parties must begin bargaining.

- The Minister of Labour may appoint, at the request of either party or on his/her own initiative, a special mediator to assist in the resolution of labour-management disputes.

Administration of collective agreements

- A new provision will require that all differences regarding the interpretation, application or alleged violation of a collective agreement be settled by arbitration after any grievance procedure established by the agreement has been exhausted.

- The powers of grievance arbitrators will be enhanced to relieve against breaches of time limits set out in an agreement with respect to grievance or arbitration procedures, to dismiss or refuse to hear an application or grievance if there has been unreasonable and prejudicial delay, and, with the consent of the parties, to act as a mediator and encourage the settlement of disputes during the course of an arbitration.

- After certification, but before the conclusion of a first agreement, an employee who is suspended or discharged for a cause other than shortage of work will have access to the arbitration process. However, this will not apply if the suspension or termination is the subject of an unfair labour practice application.

- After the conclusion of a hearing, arbitrators and arbitration boards will be required to give decisions within 30 and 60 days respectively. The parties may extend these time limits by mutual consent. The time limits will not apply in the case of an oral decision (written reasons may be requested by either party). The parties will not be responsible for the payment of the remuneration and expenses of an arbitrator or arbitration board whose decision is not rendered within the prescribed time limits.

- The Act will provide a mechanism for voluntary expedited arbitration of grievances (i.e. this process will apply only if both parties agree).

- Procedures will be provided for voluntary grievance mediation through the Department of Labour.

Changes to terms and conditions of work after the expiry of a collective agreement

- Except for imposed first agreements, the parties will no longer be able to serve a notice to terminate a collective agreement from the 60th to the 30th day preceding its expiry date. Therefore, the terms of an agreement will continue in force until replaced by a new agreement. An agreement will be terminated if a bargaining unit is decertified. The parties will be required to bargain collectively with respect to changes to terms and conditions of collective agreements.

Rules governing strikes and lockouts

- Procedures will be provided for the reinstatement of striking or locked-out employees when, following the conclusion of a work stoppage, no agreement on this matter has been reached by the parties. Subject to the availability of work, employers will be required to reinstate employees in accordance with the terms of the applicable collective agreement respecting recall or, in the absence of such provisions, seniority. Any employee who is not reinstated due to insufficient work will be entitled to notice of lay-off or pay in lieu of notice (a back-to-work protocol will override the *Labour Standards Act* provisions on those subjects).

- The new legislation will ensure that, during a work stoppage, the concerned trade union is able to make payments to continue the employees' membership in benefit plans (e.g. life, disability, medical or dental insurance plan).

- The provision on the final offer vote will be retained, but amended. The parties will be able to request the appointment of a special mediator after a strike has continued for 30 days. In addition to other powers, the special mediator, rather than the Board, will have the power to order a final offer vote.

- The provisions specifying that, on application, the Board may supervise strike and ratification votes will be retained, but only the employees affected or the trade union will be allowed to make such an application.

- A new provision will facilitate the collection of certain fines by unions. A fine imposed on a member who has worked for a struck employer during a legal strike (maximum: net earnings during that strike) will be deemed to be a debt owing to the union that can be recovered in court as if it was a debt owed pursuant to a contract.

Technological change and successorship obligations

- The definition of "technological change" will be broadened to include removal or relocation of work outside the bargaining unit. An employer will continue to give at least 90 days notice of a proposed significant change, and the trade union may serve notice to commence collective bargaining for the purpose of developing a workplace adjustment plan. A workplace adjustment plan may, among others, include provisions for employee counselling, retraining, early retirement or severance pay. If the parties

fail to develop a workplace adjustment plan, the employer may proceed to implement the change.

- On application by an employer, the Board will have the power to exempt the employer from complying with the technological change provisions if it is satisfied that the technological change must be implemented promptly to prevent permanent damage to the employer's operations.

- The Act will preserve collective bargaining obligations when certain contracted-in services are retendered. This provision will apply to contracts for the provision of cafeteria and food, janitorial and cleaning, and security services supplied to provincial and municipal government buildings, hospitals, universities or other public institutions.

- When collective bargaining relating to a business under the jurisdiction of the federal government becomes subject to Saskatchewan laws, it will continue to be subject to any existing certification orders and/or collective agreements. The Labour Relations Board will have the power to order alternate arrangements in particular circumstances.

- The Labour Relations Board will have the power to deem associated or related businesses to be one employer for the purposes of the *Trade Union Act*. This will only apply to businesses that become associated or related after this provision comes into force.

Administration and enforcement of the *Trade Union Act*

- There will no longer be alternate members of the Labour Relations Board. Members will be appointed for fixed terms. Both the Chairperson and the Vice-Chairperson will be named by the Lieutenant Governor in Council and an indeterminate number of members will represent business and organized labour in equal numbers.

- The powers of the Labour Relations Board will be clarified regarding interim orders, rectification orders, compensation for monetary losses (suffered by employees, employers and trade unions as a result of violations of the Act, regulations or a decision of the Board) and amendments and corrections of orders.

- Where, following an application for certification, the Board finds that the employer or its representative has committed an unfair labour practice or has otherwise violated the Act, and that there is no evidence of majority support for the application, but that majority support would otherwise have been obtained, it will order a representation vote. A similar provision will apply where, following an application for decertification, there has been an unfair labour practice or a violation of the Act by the trade union or an employee.

- The definition of the term "employee" will be changed: (1) to remove the ability of the Board to order an exclusion from a bargaining unit on the basis that an employee is "an integral part of his (or her) employer's management"; and (2) to include a person engaged by another person to perform services (i.e. a contract employee) if, in the opinion of the Board, the relationship between those persons is such that the terms of the contract between them can be the subject of collective bargaining.

In **British Columbia**, certain sections of Part 8 of the *Labour Relations Code*, which provides methods and procedures for determining grievances and resolving disputes under the provisions of collective agreements, were brought into force on July 15, 1994. The sections deal with the establishment of the Collective Agreement Arbitration Bureau, the appointment by the director of the arbitration bureau of an arbitration board, at the request of either party, when there is a failure to appoint one, the appointment of a settlement officer, expedited arbitration, and consensual mediation-arbitration. However, a particular section, which provides for the payment by the provincial government of one third of the cost incurred by the parties for the reasonable remuneration, travelling and out of pocket expenses of a person named to investigate a difference between them and to submit recommendations with respect to a grievance, does not apply to expedited arbitration or consensual mediation-arbitration.

In June 1994, the government of **Newfoundland** tabled a White Paper on proposed new legislation to promote economic diversification and growth enterprises in the province. It proposes that new business enterprises wishing to establish in Newfoundland and existing businesses expanding operations be eligible for special business development incentives with respect to taxation, productivity and labour relations, provided that they meet certain criteria (e.g. if they make a capital investment of at least $500,000, and have the potential to generate incremental annual sales of at least $1,000,000 and to create and maintain at least 10 full-time permanent jobs in the province).

The proposed new legislation, entitled "*An Act to Promote Economic Diversification and Growth Enterprises in the Province*", includes special provisions modifying the application of the *Labour Relations Act* with respect to corporations designated as eligible by the Lieutenant-Governor in Council. These provisions would not apply to an existing corporation if a bargaining agent has been certified for the employees of that corporation prior to the designation.

The *Labour Relations Act* would apply to the employees of designated corporations. However, a number of different labour relations provisions would be made available to those corporations. The main features of the special provisions would be as follows:

- A collective agreement would remain in force for at least five years or until the expiry of the contract (when it is for less than five years) that would be concluded by the province and the designated corporation with respect to the benefits provided to the latter and the implementation of the business proposal. Both parties could agree to a renegotiation during that period.

- If the parties are unable to conclude a collective agreement, one would be established by a special panel consisting of a representative appointed by each of the parties and a chairperson named by the Minister of Employment and Labour Relations. No strike or lockout would be allowed.

- A collective agreement reached by the parties or established by a panel would not be permitted to provide for wage increases exceeding the percentage rise in the consumer price index as reported by Statistics Canada for the area concerned.

- If they both agree, the parties could waive the application of all or some of the special labour relations provisions.

The *Labour Standards Act* would apply to the employees of designated corporations if they are not represented by a trade union.

The government of Newfoundland has indicated that its intends to introduce the legislation entitled, *An Act to Promote Economic Diversification and Growth Enterprises in the Province*, in the fall of 1994, and that it expects it to be enacted by the end of the year.

B. Public and Parapublic Sectors

In **British Columbia**, most provisions of the *Public Sector Employers Act* came into force on September 16, 1993. The rest of the provisions had taken effect on July 29, 1993. The *Public Sector Employers Act* was described in last year's issue of the *Highlights of Major Developments in Labour Legislation*.

In **Ontario**, the *Public Service and Labour Relations Statute Law Amendment Act, 1993* (Bill 117) came into force on February 14, 1994, except for some sections which had taken effect on December 14, 1993. These sections (i.e. ss.23 and 24) deal with the power of the Lieutenant Governor in Council to establish seven bargaining units of Crown employees and to designate the Ontario Public Service Employees Union as the bargaining agent for six of those units.

The Act creates a new *Crown Employees Collective Bargaining Act, 1993*, providing, among other things, for the application of the *Labour Relations Act* to employees of the Crown, who are given the right to strike.

A new broader definition of "Crown employee" is provided. Among others, it no longer excludes those persons employed in a managerial capacity, except when they regularly provide advice to Cabinet, a minister or a deputy minister on employment-related legislation that directly affects the terms and conditions of employment of employees in the public sector as defined in the *Pay Equity Act*.

The Act modifies the application of the *Labour Relations Act* to Crown employees. The modifications relate to various provisions of the Act, including those dealing with voluntary interest arbitration, first contract arbitration, grievance arbitration, successor rights, use of bargaining unit employees during a strike or lockout, and limitation of the right to strike or to lock out. Certain provisions of the *Labour Relations Act* do not apply, such as those relating to the permitted use of "specified replacement workers" during a strike or lockout and those dealing specifically with the construction industry.

With respect to limitations concerning the right to strike or to lock out, the new legislation provides that the employer and the trade union must have an essential services agreement before an employee may strike or an employer may declare a lockout. The parties who have or are negotiating a collective agreement are required to make an essential services agreement.

"Essential services" are those services that are necessary to enable the employer to prevent danger to life, health or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts or of legislative drafting. "Essential services agreement" means an agreement between the employer and the trade union that applies during a strike or lockout and that has

an essential services part providing for the use of bargaining unit employees as well as an emergency services part that provides for the use of a larger number of such employees in emergencies.

The essential services part of an essential services agreement must include provisions identifying the essential services, the number of bargaining unit employees in particular positions that are necessary and the employees who according to an agreement between the employer and the trade union will be required to work during a strike or lockout.

At any time after the employer and trade union are required to begin negotiations, the Minister of Labour must, at the request of either party, appoint a conciliation officer to confer with the parties and endeavour to effect an essential services agreement. On application by either party, the Ontario Labour Relations Board must determine any unresolved matters.

An essential services agreement continues until terminated by one of the parties. Termination may take place only when a collective agreement is in place and there are at least 190 days left before its expiry.

On application by a party to an essential services agreement, the Board may enforce the agreement, amend it and make such other orders as it considers appropriate.

A party to an essential services agreement may apply to the Ontario Labour Relations Board for a determination as to whether, because of that agreement, meaningful collective bargaining has been prevented. No application may be made until employees in the bargaining unit have been on strike or locked out for at least ten days. The Board must consider whether sufficient time has elapsed in the dispute to permit it to determine whether meaningful collective bargaining has been prevented. The Board may take the following actions:

- direct the parties to continue negotiations and/or to confer with a mediator;

- order that all matters remaining in dispute be resolved by a mediator-arbitrator, or be referred to binding arbitration (final offer selection may be required);

- amend the essential services agreement to reduce the number of designated positions or employees in the bargaining unit; or

- give other directions it considers appropriate.

If the Board determines that meaningful collective bargaining has been prevented because of an essential services agreement, it may not, upon application by either party, amend the agreement to increase the number of designated positions or employees in the bargaining unit.

A decision on an arbitration authorized under the provisions mentioned above may not include any term relating to pensions, staffing levels or work assignments.

The Act also provides that the Grievance Settlement Board is continued. Provisions are made for its structure and functioning.

In addition, amendments to the *Public Service Act* enhance the political activity rights of Crown employees and provide protection for whistleblowers.

With respect to whistleblowers, Ontario government employees are protected from retaliation when, acting in good faith, they allege serious wrongdoing by a government institution. Serious government wrongdoing is defined as an act or omission of an institution or of an employee acting in the course of his/her employment that contravenes legislation, represents gross mismanagement, causes a gross waste of money, represents an abuse of authority, or poses a grave health, safety or environmental hazard. The definition may be expanded by regulation.

Employees and officials (except lawyers with respect to privileged information received in confidence from employees) are authorized to disclose confidential government information to a newly-appointed Counsel for the purpose of determining what constitutes serious government wrongdoing that ought in the public interest to be disclosed, whether particular information may reveal serious government wrongdoing and establishing what steps can be taken to bring the information to the attention of the public or disclose it to the agencies concerned. They may also seek advice concerning their rights and obligations under the legislation.

Employees and officials are afforded protection with respect to:

- copying documents and/or disclosing information to the Counsel in accordance with the legislation;

- the disclosure by the Counsel or his/her staff of information received from the employees or officials, or their identity; or

- exercising a right under the Act.

In **New Brunswick**, two laws, effective April 20, 1994, brought the following changes to the *Public Service Labour Relations Act*:

- The parties to a collective agreement are authorized to extend the term of the agreement by mutual consent.

- Employers may, at any time after any of the employees in a bargaining unit have taken strike action, lock out any or all employees in the bargaining unit or otherwise refuse to permit them to work, and refuse to pay them. This does not apply to employees occupying designated positions.

- Upon an application by an employer to declare a strike illegal, the Public Service Labour Relations Board must make a decision within 24 hours or within such longer period as the parties may agree.

- The automatic decertification of a bargaining agent in respect of which a strike has been declared unlawful is removed; instead, the Board may decertify such a union upon an application by the employer.

- Fines have been set for an illegal strike at $100 for an employee and at $300 for an officer or representative of an employee organization for each day that the contravention continues.

- Every employee organization is liable on conviction to a fine of ten dollars for each employee in the relevant bargaining unit with respect to each day of an illegal strike that is declared, authorized, condoned or acquiesced in by it. The minimum fine is $10,000.

- At any time after a deadlock in negotiations has been declared by the Public Service Labour Relations Board, the employer may request that a vote by secret ballot of the employees in the bargaining unit affected be held on the acceptance or rejection of its most recent offer made during collective bargaining in respect of all matters in dispute between the parties. A request for such a vote may only be made once during each dispute and not in relation to disputes submitted voluntarily by the parties to binding arbitration or in relation to differences regarding technological change submitted to binding arbitration under the Act.

In **British Columbia**, the *Public Education Labour Relations Act* (Bill 52) came into force on June 10, 1994.

This Act provides that the *Labour Relations Code* continues to apply to school boards and trade unions representing teachers in the public school system. However, it introduces a provincial two-tiered system of collective bargaining.

An employers' association, established under the *Public Sector Employers Act*, is considered to be the accredited bargaining agent for all school boards in the province. With respect to the employees, the British Columbia Teachers' Federation is considered to be certified for the bargaining unit consisting of all teachers, as defined in the *School Act*. The bargaining agent may be changed or the bargaining rights may be revoked under the appropriate provisions of the *Labour Relations Code*.

All major monetary issues are negotiated at the provincial level. These include salaries and benefits, workload (including, but not limited to, class size), time worked and paid leave. Other provincial matters, and local matters to be determined by collective bargaining are designated by the parties. If the parties are unable to agree on the designation of any matter during the negotiations for the first provincial agreement, at their joint request or on his/her own initiative, the Minister of Skills, Training and Labour may refer that dispute to arbitration. The employers' association and the British Columbia Teachers' Federation must establish policies and procedures for the purpose of authorizing school boards and teachers' unions to enter into local agreements with respect to local matters, but they may not delegate authority to declare a strike or lockout.

The provisions of the *Labour Relations Code* on the settlement of a first collective agreement do not apply with respect to collective bargaining by public school teachers.

The new legislation does not require the early termination of a local agreement concluded before its coming into force. However, it provides a mechanism permitting the voluntary early termination of a local agreement expiring after June 30, 1994.

Also in British Columbia, effective July 8, 1994, amendments were made to the *Health Authorities Act* giving the Minister of Skills, Training and Labour the power to appoint a commissioner to inquire into trade union representation and jurisdiction in the health sector.

Among others, the commissioner must take into consideration the new employment relationships that will be established as a result of restructuring under the *Health Authorities Act*, and the need to promote integration of health care delivery and to enable the development over time of provincial consistency in terms and conditions of employment.

The commissioner must make recommendations regarding the composition of appropriate bargaining units, which may include recommendations regarding multi-employer certification and councils of trade unions for the health sector.

These amendments to the *Health Authorities Act* will be repealed 90 days after the commissioner reports to the Minister.

After the Minister has received the commissioner's report, regulations may be made to implement recommendations contained in the report.

In addition, laws dealing with the control of expenditures in the public sector have been proclaimed, amended or adopted in a number of jurisdictions.

In **Quebec**, the Act respecting the conditions of employment in the public sector and the municipal sector (Bill 102), which was described in *last year's issue of the Highlights of Major Development in Labour Legislation*, came into force on September 15, 1993, except for certain sections dealing with the reduction of 1% of annual expenses relating to remuneration and social benefits in public and municipal bodies, and of the indemnity paid to members of the National Assembly. These sections took effect on October 1, 1993. A provision allowing municipal bodies to waive the application of the legislation before September 15, 1993 had been in force since July 17, 1993.

In **Nova Scotia**, effective November 1, 1993, the *Public Sector Unpaid Leave Act* applies to a broadly defined public sector and requires every employee to take unpaid leave equivalent to 2% of the employee's annual hours or days of work. Certain categories of employees, such as public servants (other than deputy ministers), correctional officers, officers and employees of government agencies (other than Sydney Steel Corporation), the staff of the House of Assembly, and employees of hospitals, residential care facilities or nursing homes, are required to take the unpaid leave before April 1, 1994. However, if by reason of the operational requirements of the employer employees cannot take all of the unpaid leave before April 1, 1994, they are required to take the leave before April 1, 1996. The same applies to the employees of a municipality or municipal organization or body.

The employees of a school board or of the Nova Scotia Community College and the employees of a university are required to take the unpaid leave before July 1, 1994.

The annual pay of an employee cannot be reduced by the Act to less than $22,000. The reduction of 2% in the compensation payable to employees for fiscal year 1993-1994 is scheduled to be applied in a uniform manner between November 1, 1993 and October 31, 1994.

The Act reduces in a similar way the remuneration of elected and appointed officials, and members of various courts as well as payments for insured medical services provided by physicians, dentists, pharmacists and optometrists.

Also in Nova Scotia, effective April 29, 1994, the *Public Sector Compensation (1994-97) Act* provides for the extension of compensation plans for public employees without increases in pay rates until November 1, 1997. In addition, effective November 1, 1994, the pay rate for each position covered by a compensation plan will be reduced by 3%. However, no employee's annual pay will be reduced to less than $25,000. Also, during the period covered by the Act, limitations are provided with respect to increases in pay in recognition of meritorious or satisfactory work performance, the completion of a specified work experience or length of time in employment.

The terms "public employees" include civil servants, officers and employees of government agencies (other than Sydney Steel Corporation), municipal employees, employees of school boards and post secondary educational institutions, employees of hospitals and of licensed residential care facilities as well as officers and staff of the House of Assembly.

Measures similar to those described above apply to elected and appointed public officials and judges.

The Act does not prevent increases under the *Pay Equity Act*, but any such increases, effective during the period from November 1, 1994 to October 31, 1997, will be reduced by 3%.

An administrator and other persons necessary for the administration of the Act are appointed, and a Board is established. An employer, a bargaining agent or, if there is no bargaining agent, an employee who is affected by and is not satisfied with a decision of the administrator may request and obtain that the question be referred to the Board. The Board may decide any question referred to it and its decisions are final and conclusive, unless it considers it advisable to reconsider them. The Board has the power to issue orders requiring compliance with the Act, prohibiting an employer or other person from implementing a pay increase that does not comply with the Act, and requiring an employee to pay back to the employer or other person any such increase.

In the **federal** jurisdiction, provisions contained in Part 1 of the *Budget Implementation Act, 1994* have amended the *Public Sector Compensation Act*, adopted in 1991, and several other Acts to provide, among other things, for the extension of the wage freeze in force in the federal public sector for a further period of two years. Furthermore, incremental increases are suspended for a period of 24 months beginning on June 15, 1994. These incremental increases include those based on the attainment of further qualifications or the acquisition of skills, merit or performance increases, in-range increases and performance bonuses.

The legislation applies to federal government departments, boards, commissions and agencies, designated Crown corporations (including their directors), the Senate, House of Commons and Library of Parliament. It also covers the staff of ministers and of members of the Senate and House of Commons, order-in-council appointees, judges and members and officers of the Canadian Forces and of the Royal Canadian Mounted Police.

The above provisions took effect on June 15, 1994.

In **Prince Edward Island**, the *Public Sector Pay Reduction Act* applies to public sector employers and their employees. This includes the government of Prince Edward Island, school boards, Crown agencies and corporations, hospitals, post-secondary educational

institutions and the Legislative Assembly. Effective May 17, 1994, the pay rates for positions covered by a compensation plan were reduced by 3.75% for those whose pay rate is $28,000 or less and by 7.5% for those whose pay rate exceeds that amount (in the latter case, the pay rate cannot be reduced to less than $26,950).

No compensation plan coming into force between May 17, 1994 and May 16, 1995 may provide for an increase in pay rates or benefits. However, increases are permitted in certain circumstances, such as in the case of an adjustment under the *Pay Equity Act* and the recognition of length of time in employment when the compensation plan that applied to an employee prior to May 17, 1994 expressly provided for such an increase.

Effective May 17, 1994, the amounts paid to persons appointed as members of provincial tribunals, commissions and agencies, as annual, daily or periodical allowances were reduced by 7.5%.

It is specified that negotiations may take place between a public sector employer and its employees to achieve the purpose of the Act by a reduction in pay, offsetting considerations, reduction in other benefits or any combination of them. Negotiated agreements require the approval of Cabinet.

In the **Yukon Territory**, the *Public Sector Compensation Restraint Act, 1994* extends the collective agreement between the Government of the Yukon Territory and the Public Service Alliance of Canada (PSAC)(covering the period from April 1, 1993 to December 31, 1994) until March 31, 1998. The same applies until June 30, 1997 to the collective agreement between the territorial government and the Yukon Teachers' Association (YTA) (covering the period from July 1, 1993 to June 30, 1994).

The parties may agree in writing to amend these agreements, except with respect to compensation.

Generally, compensation is fixed and reduced for different groups of employees as follows:

- The compensation payable to employees covered by the PSAC collective agreement, and certain categories of casuals, persons employed in a confidential capacity and contract employees will not be increased before March 31, 1998. In addition, effective January 1, 1995, their wage rates will be reduced by 2%.

- The compensation payable to employees covered by the YTA collective agreement and persons employed under the *Education Act* on a relief, casual, or temporary basis will not be increased before June 30, 1997. In addition, effective January 1, 1995, their wage rates will be reduced by 2%.

- The compensation payable to employees not mentioned above, including deputy heads, managers, and certain categories of casuals and contract employees will not be increased from April 1, 1994 to March 31, 1997. In addition, effective January 1, 1995, their wage rates will be reduced by 1%.

Performance increments, experience increments or performance payments will be paid to the employees when their next entitlement arises in accordance with the PSAC or YTA collective agreement or the Personnel Policy and Procedures Manual.

The full Yukon Bonus travel benefit is standardized at $2,042 per year for eligible employees.

The Act came into force on June 7, 1994.

C. Emergency Legislation

In **British Columbia**, Part 2 of the *Educational Programs Continuation Act* (passed on May 30, 1993) provides that the Minister responsible for labour may exercise certain powers upon the designation by regulation of any board of school trustees and the trade union representing its employees. On September 10, 1993, School District No. 41 (Burnaby) and the Burnaby Teachers' Association were designated under these provisions.

By virtue of these special powers, when a special mediator has been appointed under the *Labour Relations Code*, the Minister may order that (1) his/her recommendations constitute the collective agreement between the parties, or (2) the parties have 36 hours to reach a settlement or the special mediator will issue a report deemed to be the collective agreement. In either case, the employer and the trade union may agree to modify an agreement constituted under these provisions.

Also in British Columbia, as B.C. Rail Ltd. and the Council of Trade Unions on B.C. Rail representing a number of union locals were unable to conclude a collective agreement and as the Lieutenant Governor in Council was of the opinion that an immediate and substantial threat to the economy and welfare of the province and its citizens existed, a cooling-off period of 90 days was prescribed under the *Railway and Ferries Bargaining Assistance Act* as of September 10, 1993. That cooling-off period was later extended for a further 14 days.

In **Ontario**, the *Lambton County Board of Education and Teachers Dispute Settlement Act, 1993* was passed on October 26, 1993 to settle a dispute between the Lambton County Board of Education and secondary school teachers who had been on strike since September 14, 1993.

The teachers were required to resume their duties on October 27, 1993 (exceptions were provided for those not returning to work for health reasons or by mutual consent of the teachers and the board of education). The board, for its part, was to resume the employment of the teachers and normal operation of the schools.

If the parties could not reach agreement before November 9, 1993, the board was required to submit to the teachers a description approved by the Education Relations Commission of an offer submitted to the teachers' representatives on October 20, 1993. The offer was to be submitted to a vote by secret ballot supervised by the Commission on November 12, 1993. In the event that a majority of the teachers exercising their right to vote did not accept the offer, the parties could continue to negotiate, but the term of a collective agreement entered into by the parties after the vote would have to be at least three years.

If the offer was not accepted by a majority of the teachers participating in the vote mentioned above, and, by December 6, 1993, the parties had not entered into a collective agreement or agreed in writing on a method for resolving the conflict, the Minister of Education and Training could order the use of a specific dispute resolution method.

The parties were required to jointly submit to the Minister and the Education Relations Commission, by May 2, 1994, a plan outlining the steps to be taken to improve their relationship.

Fines provided in the *School Boards and Teachers Collective Negotiations Act* apply with respect to offences under this Act.

The Act came into force on October 26, 1993 and will be repealed on September 1, 1995 or on an earlier date announced by proclamation.

Also in Ontario, the *East Parry Sound Board of Education and Teachers Dispute Settlement Act, 1993* was assented to on November 30, 1993. This law was passed to settle a dispute between the East Parry Sound Board of Education and elementary school teachers who had been on strike since October 6, 1993.

The teachers were required to resume their duties on December 1, 1993 (exceptions were provided for those not returning to work for health reasons or by mutual consent of the teachers and the board of education). The board, for its part, was to resume the employment of the teachers and normal operation of the schools.

If the parties could not conclude a collective agreement by December 7, 1993, they were considered to have referred all matters in dispute to a board of arbitration under the *School Boards and Teachers Collective Negotiations Act*. Until March 1, 1994, the parties could withdraw from the arbitration before a decision was rendered by notifying the chair of the board of arbitration that a collective agreement was negotiated and ratified.

There was a requirement that a collective agreement negotiated by the parties have a term of at least three years from September 1, 1992. If the agreement resulted from the decision of a board of arbitration, its term would be of three years starting from the same date.

In dealing with outstanding issues related to a local agreement under the *Social Contract Act, 1993* that have a bearing on the negotiations for the collective agreement, a board of arbitration was required to deal with those issues in accordance with that Act.

The parties were required to jointly submit to the Minister of Education and Training and to the Education Relations Commission, by May 2, 1994, a plan outlining the steps to be taken to improve their relationship.

Fines provided in the *School Boards and Teachers Collective Negotiations Act* apply with respect to offences under this Act.

The Act came into force on November 30, 1993 and will be repealed on September 1, 1995 or on an earlier date announced by proclamation.

Another ad hoc emergency law, the *Windsor Teachers Dispute Settlement Act, 1993*, was enacted in Ontario on December 14, 1993. However, the sections of the Act providing for the settlement of the dispute were not proclaimed into force.

In the **federal jurisdiction**, the *West Coast Ports Operations Act, 1994* was passed on February 8, 1994 to end a work stoppage and permit the resolution of a collective bargaining

dispute involving the British Columbia Maritime Employers Association and the International Longshoremen's and Warehousemen's Union - Canadian Area, representing some 3,600 workers. The last collective agreement between the parties had expired on December 31, 1992.

Effective February 9, 1994, the Act required the immediate resumption of longshoring and related operations at Canada's west coast ports, and provided for the settlement of issues remaining in dispute through the process of final offer selection.

Within seven days after the coming into force of the Act, the parties could provide the Minister of Human Resources Development with the name of a person mutually acceptable to serve as arbitrator for the final offer selection process. Failing agreement by the parties, the arbitrator was to be appointed by the Minister.

Within a period of 90 days after being appointed (subject to extension by the Minister), the arbitrator was to determine the matters on which the parties were in agreement as well as those remaining in dispute, and select the final offer of one of the parties on all the issues in dispute. In the event of failure by one of the parties to submit its final offer, the final offer of the other party was to be selected.

The arbitrator had to issue an award in the form of a collective agreement binding on the parties until December 31, 1995. Nothing in the legislation restricted the right of the parties to agree to amend any provision of the collective agreement, other than a provision relating to its term.

Fines were provided for a contravention of the Act by an individual (maximum: $1,000), by an officer or representative of one of the parties (maximum: $50,000) and by the employer or bargaining agent (maximum: $100,000). These fines were applicable to each day or part of a day during which the offence continued.

D. Construction Industry

In Quebec, *An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry and other legislative provisions* (Bill 142) was assented to on December 14, 1993.

The purpose of that Act was to establish a new process for negotiations in the construction industry. To this end, it brought amendments to the *Act respecting labour relations, vocational training and manpower management in the construction industry* having, among others, the following effects:

- to divide the industry into four sectors, the civil engineering and roads sector, the industrial sector, the institutional and commercial sector and the residential sector;

- to partially deregulate the residential sector (i.e. to exclude from the application of the Act construction work on buildings reserved exclusively for residential use and containing a total of eight dwellings or less), but to continue to require that electricians and plumbers hold qualification certificates issued under a regulation respecting manpower vocational training and qualification in sectors other than

construction (this regulation is administered by the Quebec agency for manpower development (Société québécoise de développement de la main-d'oeuvre));

- to amend the definition of the word "construction" concerning the coverage by the Act of the installation, repair and maintenance of production machinery, except where such work is carried out by permanent employees of the user or of the manufacturer or by habitual employees of a person whose principal activity is the carrying out of such work and who is charged therewith on an exclusive basis by the manufacturer;

- to provide for the making of a collective agreement for each sector, including a number of common provisions, and for the expiry of the agreements on December 31 every three years, from December 31, 1994;

- to specify that the Association of Building Contractors of Quebec is in charge of coordinating negotiations in the construction industry and is the sole agent of the employers for the purposes of negotiating and making collective agreements and that it receives its mandates from the sector-based employers' associations;

- to provide that negotiations take place between the Association of Building Contractors of Quebec and one or more employees' associations whose representativeness is more than 50%;

- to establish a process for the ratification of agreements and strike or lockout votes based on the representativeness of union and employers' associations, and provide for the extension of the provisions of an agreement so ratified to all employees and employers of a sector or of all sectors in the case of common provisions;

- to prescribe mandatory mediation before any strike may be called or lockout imposed in a sector;

- to permit strikes 21 days after mediation provided that it is called for all the employees working in the sector and that it has been authorized, by secret ballot, by a majority of voting members of one or more associations whose representativeness is more than 50% in that sector;

- to prohibit strikes and lockouts at all times in respect of a matter that must be common to the collective agreements of each of the sectors (for example, union security, the procedure for settling grievances, the basic supplemental fringe benefit plan and any compensation fund considered necessary by the parties to the negotiations in each sector);

- and to provide that, among others, a collective agreement may not limit the employer's freedom to request the services of an employee directly or through the Construction Commission (Commission de la construction) or a union reference.

Amendments have also be made to the *Building Act* to remove the obligation of having a place of business in Quebec as a requirement for obtaining a contractor's licence.

In addition, the Act has modified the *Regulation respecting placement of employees in the construction industry* among others by:

- replacing its title by the following: "*Regulation respecting the hiring and mobility of employees in the construction industry*";

- providing that the *Regulation respecting the hiring and mobility of employees in the construction industry* ceases to have effect in respect of a sector of the construction industry where a first agreement made under the new provisions of the Act comes into force for that sector.

Lastly, the *Regulation respecting the vocational training of manpower in the construction industry* has been amended to provide that anyone who demonstrates, by means of a document issued by a body having competence to do so elsewhere in Canada, that he/she has qualifications equivalent to those of a journeyman in a trade or specialty is eligible for the qualification examination.

Most provisions of this Act are scheduled to come into force on dates ranging from December 14, 1993 to January 1, 1995.

Until December 31, 1994, the Act will ensure the maintenance, for employees carrying out excluded work in the residential sector, their participation in the supplemental fringe benefit plans in force under the previous negotiation system. The Quebec Construction Commission may establish, by regulation, the terms and conditions necessary for maintaining, after December 31, 1994 and for the period it determines, the supplemental fringe benefit plans for employees who, on that date, were participating in such plans.

On December 13, 1993, Quebec also adopted *An Act respecting the construction industry*. The purpose of that Act was to ensure, from 7:00 a.m. on December 14, 1993, the resumption and normal performance of construction work interrupted by reason of concerted action by employees or a lockout by employers in the construction industry, and to provide for the working conditions of the employees governed by the *Construction Decree*.

This Act applies in respect of construction work covered by the *Act respecting labour relations, vocational training and manpower management in the construction industry*, until December 31, 1994. It extends the *Construction Decree*, with some modifications, until that date.

Obligations designed to ensure compliance with the Act are imposed on employees and employers in the construction industry as well as on their associations.

The following sanctions are provided in cases of contravention of the Act:

- administrative sanctions which include, among others, the suspension of the checkoff of union dues in respect of the construction work performed in a region (this suspension could be effective for twelve weeks per day or part of a day during which the government is of the opinion that the employees have not complied with the Act in sufficient number to ensure adequate performance of construction work in that region);

- civil liability for an association of employees and any representative association of which it is a member, to which it belongs or with which it is affiliated;

- penal sanctions which include, among others, fines for employees and employers in the construction industry as well as for their associations and individuals acting as officials or representatives of labour or employers organizations, and the suspension of an employee's competency certificate or a contractor's licence for a period ranging from one to three months for each infraction.

In addition, by an Order in Council dated April 27, 1994, the government of Quebec approved the Ontario-Quebec Agreement on the Mutual Recognition of Construction Workers' Qualifications, Skills and Work Experience.

Effective June 8, 1994, amendments were made to the *Regulation respecting the issuance of competency certificates*, the *Regulation respecting the vocational training of manpower in the construction industry* and the *Regulation respecting the hiring and mobility of employees in the construction industry* in order to make those regulations compatible with the agreement mentioned above.

The purpose of the amendments to the *Regulation respecting the issuance of competency certificates* is, among others, to make it easier for workers residing elsewhere in Canada to obtain competency certificates. These workers specify the region of Quebec within which they wish to benefit from preference of employment.

With respect to the *Regulation respecting the hiring and mobility of employees in the construction industry*, an amendment provides that an employer may assign an employee holding a journeyman competency certificate, an occupation competency certificate or an apprentice competency certificate anywhere in Quebec, if that employee has worked for him/her 1500 hours or more in the construction industry in Quebec or elsewhere in Canada during the first 24 of the 26 months preceding the issuance or renewal of his/her competency certificate.

In Ontario, amendments to the *Labour Relations Act* were adopted on December 14, 1993. These amendments concern the relationship between local trade unions in the construction industry and their parent trade unions. Except for a section dealing with the administration of employment benefit plans, the amendments are deemed to have come into force on June 25, 1992.

If a parent trade union holds bargaining rights within the jurisdiction of a local trade union (in a sector other than the industrial, commercial and institutional sector), the local trade union is deemed to share the bargaining rights, and if the parent trade union is a party to a collective agreement, the local trade union is considered a party to the agreement with respect to its jurisdiction. The Minister of Labour may require a parent trade union and its local trade unions to form a council of trade unions for the purpose of bargaining and concluding a collective agreement.

A parent trade union cannot, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992. A local trade union can make a complaint to the Ontario Labour Relations Board concerning the alteration of its jurisdiction by a parent trade union.

The provisions just described apply within the existing province-wide bargaining structures.

A parent trade union or council of trade unions is prohibited from interfering without just cause with a local trade union in such a way that the autonomy of the local trade union is affected. They are also prohibited from penalizing local trade union officials or members without just cause.

Effective January 28, 1994, local trade unions are entitled to appoint some of the trustees of employment benefit plans (exclusive of trustees appointed to represent employers).

In Nova Scotia, an amendment to the *Trade Union Act*, approved on June 30, 1994, provides that an accredited employers' organization in the construction industry only acquires collective bargaining rights on behalf of an employer with a union in the following circumstances: the union has been certified under the *Trade Union Act* or has been voluntarily recognized as bargaining agent by the employer, or the employer has authorized, in writing, the employers' organization to bargain collectively on its behalf with that union.

This amendment may result in the situation where an employer in the construction industry who is unionized with respect to some trades will be able to engage non-unionized employees or subcontractors with respect to other trades.

The legislation described above has effect from October 1, 1972, but does not affect any money paid before February 3, 1994.

E. Agriculture, Horticulture and Fishing Industries

In British Columbia, the *Fishing Collective Bargaining Act* was assented to on June 30, 1994.

Effective on the date of assent, this Act provides for the application with modifications of the *Labour Relations Code* to persons engaged in commercial fishing activities.

"Employees" are defined as persons engaged in commercial fishing, including those who accept as remuneration a share of the proceeds of a fishing venture, and "employers" are defined as persons who employ one or more employees, including those who purchase fish from a commercial fisher, provide as remuneration a share of the proceeds of a fishing venture, and employers' organizations.

An employer or authorized employers' organization and a trade union may conclude a collective agreement providing for fish prices, share arrangements between fishing vessel owners and crew members, hours of work or other conditions of employment. Written agreements entered into before the coming into force of the Act and that are still in force are considered to be collective agreements for the purposes of the Act.

In Ontario, the *Agricultural Labour Relations Act, 1994* took effect on June 23, 1994.

The Act applies to employees, trade unions, councils of trade unions, employers and employers' organizations in the agriculture and horticulture industries, subject to certain

exceptions (i.e. municipalities, silviculture operations, and when the primary business is not agriculture or horticulture).

The Act lists the provisions of the *Labour Relations Act*, as they read on June 23, 1994, that apply to the agriculture and horticulture industries. Some of the applicable provisions, such as those relating to the determination of bargaining units in the case of seasonal employees and access to employer property, are modified.

Labour relations statutes, collective agreements and trade union constitutions, by-laws or rules must not be interpreted so as to prohibit (or allow the prohibition of) a family member of an employer from performing any work for the employer.

A vote to ratify a proposed collective agreement must be by secret ballot. All employees in a bargaining unit are entitled to participate in such a vote and must have ample opportunity to do so.

Strikes and lockouts are prohibited. The parties can avail themselves of mediation procedures. If a mediator has reported to the Minister of Labour that he/she has been unable to effect a collective agreement, a selector appointed by the parties (or by the Minister if they fail to make the appointment within the prescribed time) must select all of the final offer made by one party or the other on the matters remaining in dispute. If one party fails to transmit its final offer, the selector must select the final offer of the opposite party. The parties may, however, continue to negotiate, and the selector will not consider their final offers respecting any matters on which agreement has been reached.

If the parties prefer not to use the final offer selection process, they may, following notice to bargain, irrevocably agree in writing to refer all matters in dispute to an arbitrator or a board of arbitration for final and binding settlement.

The Lieutenant Governor in Council is required to appoint a person to review Part V of the Act (Dispute Settlement) and its operation within five years after its coming into force.

The legislation also provides that the Agricultural Labour Management Advisory Committee established by the Minister is continued.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Proclamations

Alberta proclaimed in force certain sections of the *Safety Codes Act*, effective March 31, 1994, by proclamations published in the *Alberta Gazette* of March 31, 1994 and April 30, 1994. These proclamations give effect to the *Safety Codes Act* provisions concerning the safe management and control of fire prevention measures as well as to ensure, among other things, the safe design, construction, operation, and maintenance of buildings. Such measures with respect to electrical systems, elevating devices, gas systems, plumbing and private sewage disposal systems and pressure equipment, contained in the Act, will come into force at a later date. This Act makes possible occupational health and safety inspections carried out by "delegated regulatory organizations" (i.e. agencies, companies, individuals or municipalities accredited by the Minister), as well as the charging fees for such services as examinations and reviews of plans and specifications, and the issue of permits.

Saskatchewan proclaimed in force, effective October 30, 1993, its *Occupational Health and Safety Act, 1993*, described in the last issue of the *Highlights of Major Developments in Labour Legislation*.

B. Legislation of General Application

Alberta adopted the *Administrative Items Regulation* under the *Safety Codes Act*. This regulation provides a number of measures designed to give effect to various provisions of the Act. The regulation provides for the identification and the probationary certification of safety codes officers selected from within and outside the public service. It regulates the service of orders, as well as their content and format. The regulation establishes the procedures for the reporting of fires and of accidents or unsafe conditions involving a gas system, plumbing or electrical installations, elevating devices and boilers and pressure vessels, as well as the reporting of building failures that cause or have the potential to cause injury or loss of life. In addition, the regulation requires that, when submitting an application for a building permit, a person must comply with the seals and stamps requirements of this regulation. Seals and stamps can be obtained from an architect or an engineer qualified in the type of design involved. An architect or an engineer must also carry out a review during the construction of the building. This regulation repeals the *Lightning Rod Installer Qualification Regulation* (Alta. Reg. 75/83), the *Lightning Rod Sales, Installation and Maintenance Regulation* (Alta. Reg. 37/83), the *Delegation Regulation* (Alta. Reg. 136/86), the *Fire Training School Allowance Regulation* (Alta. Reg. 128/87), the *Witness and Interpreter Fees and Expenses Regulation* (Alta. Reg. 296/83), and the *Industrial Buildings Single Seal Regulation* (Alta. Reg. 64/88). This regulation came into force on March 31, 1994.

British Columbia adopted an amendment to the *Industrial Health and Safety Regulations*, concerning violence in the workplace, which became effective November 1, 1993. The *Regulations for the Protection of Workers from Violence in the Workplace* under the *Workers' Compensation Act* define "violence" as the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.

These regulations require that a risk assessment be performed in every place of employment where a risk of injury may be present. The risk assessment must take into consideration the previous experience in that place of employment, the occupational experience in similar places of employment, and the location and circumstances in which work will take place. If risk of injury is identified, the employer must establish procedures, policies and work environment arrangements to eliminate the risk to workers from violence or, where the elimination of the risk is not possible, establish procedures, policies, and arrangements to minimize the risk. The employer must also establish procedures for reporting, investigating and documenting incidents of violence in accordance with section 6 of the Regulations.

The employer is required to inform workers of the nature and extent of the risk of violence to which they may be exposed. This includes warning workers about particular persons that have a history of violent behaviour which the employees may encounter in the course of their work. The employer must instruct workers in the means for recognizing potential for violence, the procedures, policies, and work environment arrangements which have been established to minimize or eliminate the risk of violence, the appropriate response to incidents of violence, including how to obtain assistance. The employer must also instruct workers in the procedures for reporting, investigating and documenting incidents of violence.

Corrective actions must be taken by the employer in response to incidents of violence in accordance with section 6 of the Regulations. The employer must ensure that a worker reporting an injury or averse symptom as a result of the an incident of violence is advised to consult a physician for treatment or referral.

These requirements are based on the recognition that violence in the workplace constitutes an occupational hazard. As such, it must be addressed by the occupational health and safety program following the same procedures required for any other hazard by the Industrial Health and Safety Regulations.

British Columbia also adopted a regulation under the *Workers' Compensation Act* entitled *New or Amended Permissible Concentrations for Selected Substances*. This regulation establishes permissible concentrations for enflurane, halothane and nitrous oxide. It amends the permissible concentrations for acetone, carbon monoxide, chlorine, cobalt, ethylene oxide, lead, nickel, nitrogen dioxide and sulphur dioxide. This regulation became effective November 1, 1993.

In addition, British Columbia adopted *Occupational First Aid Regulations* under the *Workers' Compensation Act*, which repealed and replaced, effective January 1, 1994, the *Industrial First Aid Regulations* (B.C. Reg. 343/79). The main thrust of the new regulations is to modernize first aid requirements to better reflect the improvements that have occurred during the last decade in the accessibility to hospitals and health care facilities in the various areas of the province as well in the level of ambulance service. Accordingly, for example, readily accessible health care facilities with an emergency resuscitation area may serve as a workplace's first aid facility, under certain circumstances. In addition, certification requirements for first aid attendants have been modified to provide for three levels of certification. The level of certification as well as the number of first aid attendants required are determined according to the hazard classification of a workplace and the number of workers per shift. The instructors of level 1 first aid courses must be certified by the Workers' Compensation Board. The instructors of levels 2 and 3 courses must be trained and certified by the Board. Only training agencies registered with the Board may conduct board-

approved first aid courses. The registration requirements for training agencies are outlined in the regulations.

Newfoundland adopted *Electrical Regulations* under the *Occupational Health and Safety Act*. This regulation provides the basic qualifications of persons permitted to do electrical work. No person may do electrical work or advertise their services to do electrical work unless he or she is a registered electrical contractor who holds an Installation and Repair Permit or a Maintenance Permit, is the employee of the holder of such a permit and is the holder of either a Category A or Category B Electrical Registration Certificate, or is a registered electrical apprentice working under the direct supervision of a qualified person. Special permits may be issued by the Director responsible for the administration of these regulations for employees of companies hired to supply and maintain highly specialized electrical equipment such as medical equipment or computer systems, controls and instrumentation. The regulation also establishes the criteria to be applied by the Electrical Inspection Authority in issuing the appropriate permits and certificates. In addition, the regulation requires that the standard for the design, construction, and installation of any electrical work must be in accordance with the current edition of the Canada Electrical Code, Part I. Electrical equipment and appliances sold or installed must also be certified by an agency accredited by the Standards Council of Canada. This regulation repeals Newfoundland Regulation 246/82, and sections 1 to 8, 10, 12 and 13 of Newfoundland Regulation 144/90, as well as sections 1 to 7 of Schedule 3 of Newfoundland Regulation 144/90. The provisions of Newfoundland Regulation 144/90 respecting fees payable remain in force for the purposes of this regulation.

Similarly, Nova Scotia adopted amendments to the *Industrial Safety Regulations* under the *Occupational Health and Safety Act*, respecting work on live electrical lines. It prohibits the use of rubber gloves on live electrical lines or equipment energized in excess of 15,000 volts to ground. It also requires that a Code of Practice concerning the use of rubber gloves only to handle lines energized up to and including 15,000 volts be developed by the employer, that the code be communicated to all persons on site, and that these persons adhere strictly to the code.

The Northwest Territories adopted *An Act to amend the Safety Act* to increase the maximum fines payable by a person found guilty of an offence under that Act. Every employer or person acting on behalf of an employer found guilty of an offence upon summary conviction is liable to a fine not exceeding $500,000 (up from $10,000) and/or to a term of imprisonment of up to one year. A worker or an employee guilty of an offence is liable to a fine not exceeding $50,000 (up from $1,000), and/or to a term of imprisonment of up to six months. Where an employer is guilty of an offence under this Act, every worker or employee who has condoned the offence is liable to a fine not exceeding $25,000 (up from $500) and/or to a term of imprisonment of up to one month. This Act came into force on April 1, 1994.

Ontario adopted the *Joint Health and Safety Committees - Exemptions - Regulation* under the *Occupational Health and Safety Act*. This regulation revokes and replaces *Regulation 853 of the Revised Regulations of Ontario 1990*. The regulation provides that the exemption from the requirement for a certified member in the workplace in accordance with subsection 9 (12) of the *Occupational Health and Safety Act* applies to workplaces with fewer than 500 workers, effective August 1, 1994. This number will decrease to 50 workers, effective January 1, 1995, and decrease further to 20 workers, effective April 1, 1995.

C. Boilers and Pressure Vessels

Nova Scotia adopted the *Boilers and Pressure Vessels Act* (S.N.S. 1993, Ch. 2). This Act provides for the licensing and inspection of boilers, pressure vessels and pressure piping systems. The powers of an inspector to enter, at all reasonable times, premises for the purpose of making an inspection or an investigation are specified. These normally relate to the design, construction, testing, installation, condition, inspection, maintenance, repair, operation or use of a pressure plant (defined as: boilers, pressure vessels, pressure piping systems or any assembly of one of these), and include, for example, the power to examine books and records, and to require full disclosure either orally or in writing of persons knowledgeable of any matter relevant to the inspection or investigation. The Act contains many corresponding obligations on the part of the owners or persons in charge of a pressure plant and their employees.

An inspector has the power to issue orders requiring changes to be made for making the pressure plant comply with the Act and the regulations. Such orders may be appealed to the Chief Inspector. If an emergency situation is deemed to exist, an inspector may also determine what emergency measures must be taken to ensure compliance with the Act and the regulations. Such orders are not appealable and must be complied with within the time prescribed by the inspector, unless the person to whom the order is issued is otherwise advised in writing by the Chief Inspector. The Act specifies that no person can install, operate or use the pressure plant until any order has been complied with and the inspector has been notified in writing of that fact.

The Act provides extensive power to make regulations respecting various matters related to its application. This Act, which repeals and replaces the *Steam Boiler and Pressure Vessel Act*, will come into force on a date fixed by proclamation.

D. Health of Non-Smokers

The **federal government** adopted an amendment to the *Non-Smokers' Health Regulations* under the *Non-Smokers' Health Act*. This amendment postponed the ban on smoking on flights between Canada and Japan until September 1, 1994. The ban on all other international flights came into effect as planned on July 1, 1994. Air carriers nonetheless were required to restrict the designated smoking areas to a maximum of 15 per cent of all passenger seats made available in any month on flights between Canada and Japan.

Manitoba amended its *Act to Protect the Health of Non-Smokers* in order to ensure that a proprietor is not permitted to designate a smoking area in the following enclosed public places: a) a day care centre or nursery school; b) an elementary or secondary school; c) an instructional facility other than a post-secondary educational institution; d) any part of a retail store or shopping mall other than a restaurant; e) an elevator; or f) a banking institution.

Newfoundland adopted the *Smoke-free Environment Act*, which prohibits smoking in a workplace or in a public place. However, smoking may be permitted in public places in a designated smoking area or room if certain requirements are met, except in a day care centre or nursery school, a primary or secondary school, an acute health care facility, a retail store, a recreational facility or a vehicle designed or used for carrying passengers for a fee.

An employer and his/her representative must ensure that there is no smoking in a workplace under his/her control other than in a designated smoking room. The employer may, as prescribed by regulation, designate for smoking enclosed rooms other than those normally occupied by non-smokers. To the extent reasonably practicable, these rooms must conform to the requirements of the regulations respecting independent ventilation of designated smoking rooms. The employer must post signs that identify designated smoking rooms in a workplace.

Inspectors may be appointed by the Minister of Health to inspect public places or by the Minister of Employment and Labour Relations to inspect workplaces. Their powers are described in the Act.

Employees acting in accordance with the Act or seeking its enforcement are protected against dismissal, suspension or disciplinary measures (or the threat of such action) and against another penalty or intimidation.

Where the Act is in conflict with another Act or a regulation, or a municipal by-law, respecting smoking in a workplace or public place, the provision that is the more restrictive of smoking prevails.

This Act binds the Crown and came into force on June 17, 1994.

In addition, Newfoundland adopted the *Smoke-free Environment Regulations, 1994,* under the *Smoke-free Environment Act*. This regulation requires that specified signs and graphic symbols be posted in conspicuous places indicating that smoking is either prohibited in the workplace or permitted in certain designated areas. It also establishes the ventilation requirements concerning the separately ventilated designated smoking areas. The employer or owner of a building must ensure that signs and symbols are posted no later than September 17, 1994. Either person must also ensure that air cleaning systems or independent ventilation systems are installed in designated smoking areas no later than September 17, 1994.

E. Safety in Mines

The **federal government** adopted an amendment to the *Uranium and Thorium Mining Regulations* under the *Atomic Energy Control Act*. This regulation clarifies the powers of inspectors to issue to the holders of a license under the Act, the person in charge of the mining facility or of any part of a mining facility, or to anyone who may be in contravention of the Act a notice requiring, among other things, preventing, correcting a situation that is capable of threatening, or minimizing such a threat to health, safety, security or the environment.

British Columbia adopted the *Mines Regulation* under the *Mines Act*. This regulation enables inspectors to investigate any matter relating to the health and safety of any person during the exploration, development, operation, closure or abandonment of a mine, including an investigation pertaining to a death or injury, accidents, dangerous or unusual occurrences or complaints or allegations relating to health or safety. Management must provide the inspector with full access to the mine, including the underground and surface portions, and to all mine records.

The **Northwest Territories** adopted the *Shift Boss and Hoist Operators' Certificate Regulation* under the *Mining Safety Act*, which authorizes the Chief Inspector of mines to issue shift boss certificates and hoist operators' certificates on behalf of the Minister.

Ontario adopted amendments to the *Mines and Mining Plants Regulation* (R.R.O. 1990, Reg.854) under the *Occupational Health and Safety Act* in order to provide that:

- the design of a trolley line system having an operating voltage greater than 300 volts must be submitted, together with drawings, plans and specifications for review by an engineer of the Ministry;
- the mine design must, among other things, describe the mining method including stope sequencing and blasting methods;
- notice must be given to the Director of any unexpected and uncontrolled run of material, water or slimes in excess of one cubic metre that could have endangered a worker;
- safe procedures for performing non-routine hazardous tasks must be developed by the employer and the joint occupational health and safety committee or the health and safety representative;
- the employer must inform the workers of the nature of the task and instruct them in the safe performance of the task;
- the use of safety fuses by workers is prohibited in an underground mine or for blasting operations in chutes, passes or millholes;
- machines equipped with movable or extendable booms must not be operated near energized electrical supply lines except under the prescribed circumstances;
- dumbwaiters, escalators and moving walks installed after March 31, 1994, must meet the requirements of National Standard CAN/CSA B44-M90, "Safety Code for Elevators";
- safe procedures for raising or lowering workers by hoist, derrick, crane or similar device must be developed jointly by the employer and the joint health and safety committee or the safety representative;
- a power driven raise climber must be equipped with an overspeed safety device approved by the manufacturer that will stop and hold the climber if it travels faster that its design speed;
- an operator of mobile cranes, shovels, and boom trucks, or other similar equipment must have a subsisting hoisting engineers certificate issued under the *Trades Qualifications and Apprenticeship Act*, or other approved qualifications;
- a clutch of a drum hoist must be interlocked with the braking system so that the brakes will, among other things, apply if the clutch begins to disengage inadvertently;

- a device must be installed on drum hoists that indicates to the operator whether or not the clutch is fully engaged;

- operators of mine hoists, including those used to transport persons, must be over 18 years of age; and

- suitable sanitary conveniences must be provided in accordance with the requirements of this regulation.

F. Proposed Regulations

British Columbia's Workers' Compensation Board has prepared draft *Ergonomics Regulations* aimed at protecting workers from adverse physiological effects from the organisation of work, while maintaining employer flexibility as to how this protection will be provided.

The **Nova Scotia** Occupational Health and Safety Advisory Board established a working group to draft a new general *Occupational Health and Safety Regulation* under the *Occupational Health and Safety Act*. The proposed regulation deals with worker exposure to chemical substances, physical agents, biological substances and ergonomic conditions. In particular, the regulation will focus on issues such as: illumination, noise, temperature, and personal protective equipment. The review will include an examination of the occupational exposure limits as well as the monitoring and control measures of substances such as isocyanates, lead, silica and asbestos.

The **Ontario** Minister of Labour has announced that firefighters of Ontario's municipal fire departments will be covered by a new occupational health and safety regulation. The Ontario Fire Service Advisory Committee, established under the *Occupational Health and Safety Act*, will advise the Minister about issues related to firefighters' health and safety.

In addition, the Ontario Workplace Health and Safety Agency and the Ministry of Labour are developing new first aid training standards and a new first aid regulation for workplaces in Ontario.

The Ontario Minister of Environment has announced that a new regulation aimed at protecting workers' health and safety and the environment will cover dry cleaning facilities. The draft regulation would require at least one full-time worker at every dry cleaning facility in Ontario to be trained and certified in the proper handling, use and disposal of the various chemicals used in such facilities. This requirement also would help limit the release of dry cleaning solvents into the air.

Finally, the Ontario Ministry of Labour has issued proposed regulations that establish criteria used by an Occupational Health and Safety Adjudicator for determining whether to grant certified joint health and safety committee members and ministry of labour inspectors the unilateral authority to issue a stop-work order in dangerous circumstances. The regulation would also be designed to help determine whether a constructor or employer has demonstrated a failure to protect their workers' safety or health.

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Highlights

of

Major Developments

in

Labour Legislation

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HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

August 1, 1994 to July 31, 1995

I. EMPLOYMENT STANDARDS

A. Proclamations

Alberta has proclaimed Bill 4, the *Employment Standards Code Amendment Act, 1994* (S.A. 1994, c. 14), which was described in the *Highlights of Major Developments in Labour Legislation 1993-94*, effective November 1, 1994. The *Employment Standards Code Amendment Act, 1994* provides, among other things, for the recovery of costs related to the administration of the Code, the hiring of persons to perform various services in administering the Code, the streamlining of the complaint procedure under the Code, director liability for offences committed by their corporation, and increases in the amount of the fines under the Code.

British Columbia proclaimed in force Bill 37, the *Skills Development and Fair Wage Act* (S.B.C. 1994, c. 22), effective September 1, 1994. Among other things, the Act requires every project to which it applies to meet a certain number of requirements, including requiring most trade workers to hold the appropriate certificate of apprenticeship, a certificate of qualification or a Red Seal Program certificate. It requires every contractor or subcontractor to comply with this Act and, among other things, pay fair wages to their workers in accordance with the regulations and keep records on their workers' qualifications, rates of pay and hours of work.

Saskatchewan proclaimed Bill 32, *An Act to amend the Labour Standards Act, 1994* (S.S. 1994, c. 39) effective February 3, 1995, except for the following: clause 3(f); that portion of section 8 which enacts section 13.4 of the *Labour Standards Act*; sections 26, 27, 29 and 40; and that portion of clause 45(d) which enacts clauses 84(1)(e.2) and (e.5) of the *Labour Standards Act*. That portion of section 36 which enacts section 68.4 of the *Labour Standards Act* (provision concerning the limitation period) became effective on August 1, 1995. The most notable of the provisions not proclaimed are those that would require employers to offer to part-time workers any additional hours of work that become available, in accordance with their seniority and qualifications (section 13.4 of the *Labour Standards Act*), and that would require employers to give notices of discharge and of lay-off (section 26 of that Act).

B. Legislation of General Application

The **federal government** adopted amendments to the *Canada Labour Standards Regulations* under the *Canada Labour Code* to give effect to provisions contained in *An Act to amend the Canada Labour Code and the Public Service Staff Relations Act*, which came into force on June 23, 1993, relating to modified hours of work, vacation and general holidays, as well as reassignment and leave of pregnant or nursing employees, and injured worker protection.

The regulation establishes detailed procedures for the implementation of a modified work week, postponement and waiver of an annual vacation and substitution of a general holiday. The regulation specifies the information to be contained in the notifications and agreements required by the Code, and in the records to be kept by employers. The required information respecting notifications to employees is set out in Schedule III.

The regulation requires the employer to notify the trade union when averaging of hours of work is adopted due to operational necessity. Where the averaging is part of a written agreement with a trade union, the requirement to notify the Regional Director is lifted. The regulation stipulates the reduction that must be made in the standard and maximum hours of work to account for specified periods of leave taken during an averaging period. The information to be contained in the notification to employees is set out in Schedule IV.

The regulation updates the terms and conditions under which may be applied the new provision allowing an employment year, other than the anniversary year, to be adopted for the purposes of postponing or waiving annual vacations without ministerial permit. The procedure ensures that affected employees receive an exact pro-rata of the vacation pay to which they are entitled. This formula applies to the period between the anniversary date and the chosen employment year.

The regulation specifies that the employer must allow an employee to return to work after a work-related illness or injury within 18 months of the declaration, contained in a medical certificate issued by a qualified medical practitioner authorized by the plan the employer subscribes to, that the employee is fit to return to work, with or without conditions. Moreover, where the employer cannot allow the employee to return to work within 21 days of the issuance of the certificate, he/she must notify in writing the employee and his/her trade union, where applicable, whether the return to work is reasonably practicable and, if not, the reasons it is not. An employer who lays off, terminates the employment or abolishes the functions of an employee within nine months of the employee's return, must demonstrate to an inspector that the action was not due to his/her absence because of a work-related illness or injury. The requirement to keep records is extended to this standard and the provision respecting the continuity of employment applies to it as well.

This regulation also amends Parts III, IV and VI of Schedule II (Industrial Establishments), which describes certain industrial establishments for the purposes of the group termination provisions. These amendments reflect the current organizational structure of three national companies: VIA Rail Inc., Air Canada and Bell Canada.

This regulation came into force on October 25, 1994.

British Columbia has adopted a new *Employment Standards Act* (Bill 29), which, when it is proclaimed, will repeal and replace the existing *Employment Standards Act*. The new Act implements many of the recommendations made to the Minister of Skills, Training and Labour by the Thompson Commission, in February 1994. In general, the changes include more flexible work arrangements for employers and employees, a streamlined investigative process, the establishment of an independent appeal tribunal to replace the Employment Standards Board, more stringent enforcement procedures and increased penalties for violating the Act. With respect to new substantive rights of employees, the Act provides for the payment of interest on unpaid wages, and the addition of unpaid bereavement leave, leave for jury duty and leave for family responsibilities. The following describes the salient differences between the previous legislation and this Act.

Purposes of the Act

The purposes of this Act are to: ensure that the employees covered receive at least basic standards of compensation and conditions of employment; promote the fair treatment of employees and employers; encourage open communication between employers and employees; provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act; foster the development of a productive and efficient labour force; and assist employees in meeting work and family responsibilities.

Minor Derogations and Variances

The Act applies to all employees, other than those excluded by regulation, regardless of the number of hours worked. The requirements of this Act or the regulations constitute minimum requirements. However, collective agreements may derogate somewhat from the Act in the areas of hours of work and overtime, statutory holidays, annual vacations and termination of employment, provided that, on the whole, the rights of employees under the collective agreement meet or exceed those provided under the Act in each of those areas, and certain other conditions are met.

In addition, new provisions allow an employer and any of his or her employees to jointly apply, in accordance with the regulations, for a variance of any of the following provisions: the period of time defined as a "temporary layoff"; the interval constituting a regular payday; restrictions concerning special clothing; the required notice for effecting a change in shift; the minimum call-in pay; the maximum hours of work; the hours free from work each week; the overtime wages for employees not on a flexible work schedule; and the notice and the termination pay requirements for group terminations. The director of employment standards (wherever the term "director" is used, it also includes a person to which the director has delegated authority in accordance with the Act) may grant a variance if a majority of the employees to which the variance would apply are aware of its effect and approve of the application, and if the variance is consistent with the intent of the Act. The director may specify the conditions in which the variance will apply.

Flexible Work Arrangements

New provisions allow increased flexibility for employers and employees with respect to the scheduling of work. The Act provides that employers may adopt a flexible work schedule for employees *not covered* by a collective agreement if at least 65 per cent of the employees affected by the schedule approve of it. In the case of employees who are covered by a collective agreement, approval must be obtained from the trade union representing the affected employees. Certain other conditions, concerning the period of scheduling, the procedure to follow to obtain approval, the payment of overtime pay, and the cancellation of flexible work schedules, apply.

Time Banks

In addition, the Act allows the banking of overtime hours where an employee requests it and the employer agrees. A time bank is established for the employee, and the employer credits the employee's overtime wages to the time bank instead of paying them to the employee at the

overtime rate in accordance with the Act. The employer must ensure that all overtime credited to an employee's time bank are either paid to the employee, or taken as time off with pay, within six months after the overtime wages were earned. A common date for paying all employees who bank time may be established, so long as this does not result in an extension of the six month period for any employee. On termination of employment, or upon receiving the employee's written request to close the time bank, the employer must pay the employee the amount credited to the time bank.

New Leave Entitlements

An employee is entitled to up to five days of unpaid leave each year to meet responsibilities related to the care, health, or education of a child in the employee's care or the care or health of any other member of the employee's immediate family.

An employee is entitled to up to three days of unpaid leave upon the death of a member of the employee's immediate family.

If an employee is required to attend court as a juror, the employer must provide the appropriate jury duty leave.

An employer is no longer allowed to require an employee to commence her maternity leave within 11 weeks of the estimated date of birth, where the pregnancy interferes with the performance of her duties.

An employer must grant to an employee who requests it the pregnancy, parental, family responsibility, bereavement, or jury duty leave to which he or she is entitled. The employer cannot terminate the employment of that employee, or change a condition of employment without the employee's consent, because of a pregnancy or a leave allowed by the Act. As soon as the leave ends, the employer must re-instate the employee in the same position the employee held or in a comparable one.

The periods of employment preceding the leave and following the leave are deemed continuous for the purposes of pensions, medical plans and other benefits, as well as for vacation entitlement and length of service when calculating appropriate notice of termination. In addition, the employee may opt to continue to contribute his or her share of any benefit plan during the leave, in which case the employer must also continue to contribute. If the employer pays the total cost of a plan, he or she must continue to make the payments as if the employee was not on leave. Moreover, the employee is entitled to all increases in wages and benefits, as if the employee was not on leave.

Complaints, Investigations and Determinations

The new Act allows complaints to be lodged by third parties, in addition to employees, former employees and employers. The director has increased discretion to refuse to investigate a complaint, or may stop or postpone investigating a complaint which: is not made within the limitation period (six months, as previously); does not fall within the ambit of the Act; is deemed frivolous, vexatious or trivial, or not made in good faith; is not supported by enough evidence to prove it; is the object of proceedings before a court, tribunal, arbitrator or

mediator, or has been the object of a decision or award from such; or has been settled some other way. Previous amendments to the *Employment Standards Act* introduced arbitration under collective agreements to resolve complaints, by deeming the provisions of the Act to be part of the collective agreement, wherever employees are covered by a collective agreement. In addition, proceedings in the courts or other tribunals may bear on the outcome of complaints under this Act. Therefore, it was considered advisable to give to the director the power to delay proceeding with a complaint pending the outcome of other proceedings.

The Act stipulates more clearly that the director may conduct an investigation to ensure compliance with the Act even in the absence of a complaint.

For the purposes of this Act, the director has the protection, power and authority of a commissioner under the *Inquiry Act* to summon and compel attendance of witnesses, require the production of documents, administer oaths, direct questions, etc. In addition, this Act provides powers of entry and inspection which allows the director to carry out an audit of an employer or employer group. It is also provided that the director may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120 of the Act.

If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond.

The Act makes clear the powers of the director to effect an amiable settlement of any complaint, and to make an appropriate determination, in the absence or failure of such a settlement.

Where a determination concerns an amount of unpaid wages, the amount is limited to wages due within the 24-month period (previously limited to six months) preceding the complaint, the date of the termination of employment, if earlier, or the determination, where the investigation was not the result of a complaint.

The Act now provides for the payment of interest accrued on wages or other amount (such as pay-in-lieu of notice of termination) that went unpaid in the 24-month period described above. In addition, interest at a prescribed rate is payable from the earlier of the date the employment has been terminated or the date a complaint was lodged, to the date of payment. This part of the interest is deemed to be wages, and the provisions of the Act respecting the recovery of unpaid wages apply to it. If payment is not made within 23 days of a determination that wages are due, interest begins to accrue again once those 23 days have elapsed. Except with respect to security provided or bond posted by an employer to guarantee the payment of wages, amounts collected under the Act earn interest at the prescribed rate from the date the amount is deposited to the date of remittance to the person entitled. The Act also provides that the government may, by regulation, establish different rates for different purposes.

Enforcement

The part of the Act dealing with enforcement now includes many provisions which were contained in various parts of the former Act, in order to make it flow better and facilitate its use and understanding. Regrouped under this part are provisions respecting, among other

things, liens, third party demands, certificates of judgements, seizure of assets, declarations of associated employers or corporations, liability of officers of a corporation, successor rights in the case of the sale of a business or its assets, and penalties.

A stipulation is added to the provision creating a lien for unpaid wages. It provides that the lien also has priority over a mortgage of, or debenture charging, land which was appropriately registered even *before* the registration of a certificate of judgement obtained following a determination of unpaid wages or order of the tribunal under this Act. However, this priority is limited to money paid toward the mortgage or debenture only *after* the certificate of judgement was registered.

Attachment of third party debts, or third party demands, remain possible as previously was the case, though the provision's clarity has been improved.

The court registry in which (the B.C. Supreme Court's) the director may file a determination or an order of the tribunal, and the circumstances in which the certificate of judgement obtained in this manner renders the determination or order enforceable as a judgement of that court have been specified.

The procedures respecting the seizure of assets to satisfy the amount of unpaid wages (and seizure costs) have been simplified.

The Act provides that the director may impose monetary penalties on any person (including an employee, officer, director or agent of a corporation) who has contravened the Act, in accordance with the prescribed schedule of penalties. The intention is to allow the imposition of escalating levels of penalties on persons who contravene the Act repeatedly. The penalties are attached to the determinations made by the director or the orders of the tribunal, and must be paid whether or not the person is guilty of an offence under this Act or the regulations. Where a person has been convicted of such an offence, that person is also liable to pay a fine under section 125 of the Act.

In addition, if an employer has, at any time, failed to pay wages to his\her employees, the director may require that employer to provide an irrevocable letter of credit or other satisfactory security or to post a bond under the *Bonding Act* to insure compliance with the requirements relating to the payment of wages.

The director may compile information relating to contraventions of this Act or the regulations, including information identifying the persons who, according to a determination or an order, committed the contraventions. Despite the *Freedom of Information and the Protection of Privacy Act*, the director may publish the information, and make it available for public inspection during regular business hours at offices of the Employment Standards Branch.

Employment Standards Tribunal

The Employment Standards Tribunal is established to replace the Employment Standards Board. The Board was essentially an internal review mechanism, which could be followed by an appeal to the Supreme Court of British Columbia, under certain circumstances. This mechanism gave rise to a perception of denial of natural justice with respect to the right to an

independent review. The new Tribunal is intended to preserve an appeals system which is relatively informal, with minimum reliance on lawyers, and combines the objectives of expeditiousness and minimal cost to the parties and the Ministry. The practice of allowing Ministry staff to settle as many complaints as possible without issuing a determination or order is encouraged, as long the rights of the parties to a fair and impartial hearing is respected.

The tribunal is composed of a chair appointed by the Lieutenant-Governor in Council, as many adjudicators as considered necessary appointed by the chair, and as many members as the Minister may decide to appoint, representing, in equal numbers, the interests of employers and of employees.

The tribunal is given much the same powers as the director, including those under the *Inquiry Act* and other investigative powers, and is mandated to make any decision on questions of fact or law arising in the course of an appeal or review.

The tribunal is master of its own procedure and is not necessarily required to hold an oral hearing. The decision of the tribunal on any matter in which it has jurisdiction is final and binding, and is not open to appeal or review in any court on any grounds. The tribunal may, upon request or on its own motion, reconsider a decision it has rendered. Decisions, with motives, of the tribunal on appeals and reconsiderations, as well as its recommendations to the Lieutenant-Governor in Council about the exclusion of classes of persons from all or parts of the Act, must be made available in writing in a publishable form.

Other provisions

The director may delegate *to any person* any of his or her functions, duties or powers under the Act. However, the director may not delegate to the same person the function of conducting investigations into a matter and the power to impose penalties in relation to that matter. If the director personally investigates a matter, he or she must delegate the power to impose penalties in that matter.

Except for a prosecution under this Act or an appeal to the Employment Standards Tribunal, the director or a delegate of the director may not be required by a court, board, tribunal or person to give evidence or produce records relating to information obtained for the purposes of this Act.

As mentioned above, this Act repeals and replaces the existing *Employment Standards Act* and repeals the *Labour Regulation Act*. It will come into force by proclamation.

In addition to the amendments to the Act described above, British Columbia amended its *Employment Standards Act Regulation* to implement some of the recommendations of the Thompson Commission. The *Employment Standards Act Regulation* has been amended by B.C. Reg. 62/95 and B.C. Reg. 116/95, effective March 1, 1995, to expand coverage for persons with disabilities and for various occupations which previously had been excluded, including full or partial coverage for certain farm workers, live-in domestics, live-in home support workers, taxi drivers, artists, resident caretakers, certain newspaper carriers, security personnel, firefighters, and fishers. Sitters who work more than 15 hours a week for a sole

client, which had originally been included in the above list by B.C. Reg. 62/95, remain excluded following the adoption of B.C. Reg. 116/95.

A new provision is added to the regulation requiring every employer to provide a written employment contract to a domestic, upon hiring. The contract must clearly set out the conditions of employment, including the duties to be performed, the hours of work, the wages, and the charges for room and board. If the employer requires a domestic to work any hours other than those stated in the contract, he/she must add those hours to the hours worked under that contract and remunerate them accordingly.

The regulation also provides minimum wage increases, which are described below in Section D.

Saskatchewan adopted the *Labour Standards Regulations, 1995* (R.R.S., c. L-1, Reg. 5), pursuant to its new *Labour Standards Act* (see proclamation above). This regulation repeals and replaces the *Labour Standards Regulations* (S. Reg. 317/77). However, it re-enacts most of the provisions of the previous regulation, though it removes or amends a number of the exclusions it contained.

The most salient aspect of this new regulation is the provisions respecting the extension of certain benefits to eligible part-time employees employed by employers with 10 full-time-equivalent (FTE) employees or more at their service, where the employer offers those benefits to full-time employees. The regulation sets out a formula for the calculation of the number of FTEs for use in businesses that have been in existence for at least one year, and another for businesses that have been in existence for at least 13 weeks, but less than one year. For the purpose of the calculation of FTEs, all employees (including those acting in a managerial capacity) employed by an employer at all of his/her establishments are considered.

Benefits which employers are required to offer also to part-time employees (if full-time employees are entitled) include: a dental plan, a group life plan, an accidental death and dismemberment plan, and a prescription drug coverage plan, if the employer makes contributions to any such plan on behalf of employees, or if they are self-funded by the employer.

In addition to the above requirements, part-time workers can become eligible for benefits only if they work an average of 15 hours per week or more. Moreover, the regulation imposes a qualifying period of 26 weeks of continuous employment after the date of hire before any part-time employee can become eligible. Full-time students are excluded regardless of the number of hours they work per week.

The regulation also establishes the employees' entitlements to the various benefits. In essence, part-time employees will be entitled, in the absence of any other benefit formula, to a somewhat less generous version of each plan, which exclude vision care subsidies, disability insurance, and paid sick leave.

Where a benefit plan requires contributions to be made by eligible employees, those contributions must be made on a pro-rated basis, and be shared between the employer and the employee in the same proportion as that for full-time employees.

The provisions concerning the benefit plans will come into force with respect to employees who are represented by a trade union, on the date the collective agreement expires, or February 1, 1996, whichever is earlier. With respect to non-unionized employees, these provisions became effective August 1, 1995.

All other provisions of the regulation became effective on February 3, 1995.

On May 3, 1995, the **Yukon Territory** adopted Bill 28, *An Act to amend the Employment Standards Act*, which makes a number of substantive changes to the *Employment Standards Act* and brings greater clarity to certain provisions. For example, the definitions of "employer", "wages" and "week" are amended to make the Act simpler to apply, and the weekly rest-days provision is amended to apply to "hours of work" rather than "standard hours of work". What follows is a summary of the salient changes.

Hours of Work and Overtime

The Act allows employers and employees to enter into a written agreement for compensatory time off in lieu of overtime pay. Each overtime hour worked must be compensated at a rate of one and one-half hours of paid time off work, given within the following 12 months. Compressed work-weeks arrangements are made more flexible, by spreading working time over a two week period. Variances to hours of work provisions can be approved by the Director of Employment Standards, to accommodate the extension of split shifts over longer periods than 12 hours, where the employer and employee agree. Subject to operational requirements, an employer must make reasonable efforts to give an employee who is required to work overtime a reasonable advance notice of this requirement. Where there is an emergency, the employer can give a shorter notice of the requirement to work overtime than would otherwise have been provided. An employee may refuse to work overtime for just cause but is required to state the refusal and the cause to the employer in writing. An employee who considers that he or she is being required to work an excessive number of hours or that the hours of work are detrimental to his or her health or safety may file a complaint with the director, who will inquire into, and make a determination on, the matter.

Public Holidays

An employee may be required to work on a holiday. In such a case, the employer must pay the employee his or her regular rate for the day, plus: a) the overtime rate for all hours worked, or b) his or her regular pay for all hours worked plus another day off which may be added to an employee's annual vacation or taken at a time convenient to the employer and employee. In addition, an employee who has already been absent for 14 consecutive days immediately preceding a holiday on a leave of absence without pay requested by the employee, is not entitled to pay for a general holiday on which that employee did not work.

Parental Leave

Employees who have worked for an employer for 12 months or more and who provide at least four weeks' notice are entitled to take 12 weeks of unpaid parental leave. The leave is to be taken within 52 weeks of the birth or adoption of a child, or the date the child comes into the actual care and custody of the parents. The leave may be taken by either parent, or it can be

shared between them. If the natural mother of a child takes both maternity leave and parental leave, the leaves must be continuous unless the employer and employee agree otherwise, or a collective agreement provides otherwise. If both parents work for the same employer, the leave cannot be taken at the same time, except in certain circumstances. Employees are required to give at least four weeks' notice to their employer of the date of return to work if they intend to return before the leave entitlement is over.

Other Leaves

Unpaid sick leave can accrue to 12 days in a year, an increase from six days. Bereavement leave provisions have been amended to increase the duration of unpaid leave from three days to up to one week, and to expand the list of relatives whose death gives rise to the leave. The list now includes the spouse (including a common-law spouse), parent, child (including a foster parent's child), brother, sister, father of the spouse, mother of the spouse, step-mother, step-father, grandparent, grandchild, son-in-law, daughter-in-law, and any other relative permanently residing with the employee. The bereavement leave provisions also apply in cases of First Nations employees to let them prepare for funerals and potlatches according to clan customs.

Notice of Terminations

An employee who has completed six consecutive months of employment or more, but less than one year, is entitled to one week's notice of termination of employment; an employee with one year or more, but less than three years, is entitled to two weeks' notice; an employee with three years, but less than four, to three weeks' notice; an employee with four years, but less than five, to four weeks' notice; an employee with five years, but less than six, to five weeks' notice; an employee with six years, but less than seven, to six weeks' notice; an employee with seven years, but less than eight, to seven weeks' notice; and an employee with eight years or more is entitled to eight weeks' notice of termination.

An employee who has been employed six months or more, but less than two years, must give his or her employer at least one week's notice before terminating his or her employment; an employee with two years of service, but less than four, must give two weeks' notice; an employee with four years, but less than six, three weeks; and an employee with six years or more of service must give at least four weeks' notice.

Payment of Wages

Record-keeping rules have been clarified. Employers are now required to keep complete and accurate records concerning an employee for at least one year after the last day worked. Wages must be paid within ten days after the regular pay period, and seven days after termination (up from seven and three days, respectively). Termination pay may be paid in instalments. Deductions from wages are prohibited, except for statutory deductions and the direction by an employee to pay his or her wages to a spouse or another member of the immediate family. However, written assignment of wages may be honoured by the employer. An employer who intends to reduce an employee's pay rate must give at least one pay period's notice to the employee.

Recovery of Unpaid Wages

The limitation period for filing a complaint is shortened from one year to six months. The rules for referrals to the Employment Standards Board and for appeals of the Board's decisions have been clarified. If an employer makes an application for review of the director's certificate of unpaid wages, the employer must deposit an amount equal to the wages owing, or $250, whichever is less.

Provisions respecting the priority of wages, the liability of directors of a corporation for unpaid wages, and the establishment of secured debts for wages have been clarified.

The powers of the Board have been somewhat increased. The Board can award interest on the amounts set out in a certificate. It can also determine the number of hours of work for which an employee claims to be unpaid, up to 10 per day, 60 per week, or those alleged by the employee, in the absence of records or where both parties' records are not credible. The Board may impose a penalty of up to $1,000 in cases where this is warranted. Board members now also enjoy immunity from legal action.

Fair Wages

Finally, with respect to the fair wages provisions, the schedule to the Act is clarified and provision is made for the adoption of regulations.

This Act came into force on October 1, 1995.

C. Administration and Enforcement

In addition to the several items described in Section B above which relate to this topic, the following specifically deal with administration and enforcement.

Alberta adopted the *Fees and Costs Regulation* under the *Employment Standards Code*. This regulation provides that, for the purposes of recovering the government costs in administering the Code, the Director of Employment Standards shall charge fees in accordance with a Schedule prescribed by the Minister. In addition, the Director may charge fees relating to, among other things, contracted services, audits, payment orders, third party demands, the lodging of appeals and hiring an umpire. This regulation applies in relation to complaints concerning the recovery of unpaid wages, overtime pay, benefits or parental leave, only in respect of complaints made after the coming into force of the regulation or, in the case of termination, if the termination occurred after the coming into force. This regulation came into force on November 1, 1994.

Ontario adopted Bill 175, the *Statute Law Amendment Act (Government Management and Services), 1994*, which amended, among other legislation, the *Employment Standards Act* to provide that, when a complaint against an employer is made, an employment standards officer may require the complainant and the employer or a representative of the employer to attend a meeting with the officer and to bring specified documents to the meeting. A provision is added to the Act to permit the reciprocal enforcement of employment standards orders and

judgements with other jurisdictions in Canada, as well as with other countries. An order in council declaring a particular jurisdiction to be party to a reciprocal enforcement agreement is necessary to trigger this process. These amendments came into force on December 9, 1994.

Quebec has adopted Bill 44, an *Act to Amend the Act respecting labour standards and the Act respecting the Ministère du Revenu*. This Act transfers to the Ministry of Revenue (ministère du Revenu) the functions relating to the levying of the employers' contributions to the financing of the Labour Standards Commission (Commission des normes du travail). A chapter is added to the *Act respecting labour standards* concerning matters specific to the levying of contributions, except the rate of the contributions which will continue to be determined by regulation by the Commission. The Act provides that the provisions of the new chapter constitutes a law administered by the Minister of Revenue and to render the provisions of the *Act respecting the Ministère du Revenu* applicable and enforceable in respect of the collection of contributions. The *Act respecting the Ministère du Revenu* is also amended to make certain necessary adjustments resulting from the above-mentioned provisions and to provide that the more severe penalties imposed in fiscal matters do not apply to the contributions. This Act came into force on December 21, 1994, except section 13, which came into force on January 1, 1995.

D. Minimum Wages

British Columbia amended its *Employment Standards Regulation* to provide, among other things, minimum wage increases from $6.00 to $6.50 per hour, effective March 1, 1995, and to $7.00 per hour, effective October 1, 1995. The lower minimum wage rate for youth has been eliminated, also effective March 1, 1995. In addition, the minimum wage rates for live-in home support workers, resident caretakers and farm workers employed on a piece-work basis to hand harvest certain fruit, vegetable or berry crops have been increased.

Manitoba adopted an amendment to the *Minimum Wages and Working Conditions Regulation* under the *Employment Standards Act* to provide increases in the general minimum wage, for work done during standard hours, from $5.00 to $5.25 per hour on July 1, 1995, and to $5.40 per hour on January 1, 1996.

Ontario has raised its minimum wage rates by amending the *General Regulation* under the *Employment Standards Act*, effective January 1, 1995. The general rate has been increased from $6.70 to $6.85 an hour. The rate payable to students under 18 employed for not more than 28 hours a week or during a school holiday has been raised to $6.40 per hour, up from $6.25. Employees serving alcoholic beverages in licensed establishments are entitled to $5.95 per hour, up from the previous rate of $5.80 per hour. Hunting and fishing guides who work five consecutive hours or more in a day are entitled to $68.50 for that day, up from $67.00, whereas those who work less than five hours are entitled to $34.25, up from $33.50 per day. The increase in the general minimum wage rate automatically entails an increase in the rate payable to homeworkers, who are entitled to 110 per cent the general rate (the 10 per cent premium is intended to cover overhead costs normally borne by the employer). Homeworkers are therefore entitled to $7.54 per hour, up from $7.37 per hour.

Effective the same date, the regulation also revises the maximum deductions for room and board, as follows:

- $31.70 a week for a private room, up from $31.00 a week, or $15.85 a week if the room is not private, up from $15.50 a week;
- $2.55 for a single meal and not more than $53.55 a week, up from $2.50 for a single meal and $52.50 a week; and
- $85.25 a week for both a private room and board, up from $83.50, and $69.40 per week for both room and board, if the room is not private.

In addition, Ontario has amended the *Fruit, Vegetable and Tobacco Harvesters Regulation*, effective January 1, 1995. The minimum wage rate payable to fruit, vegetable and tobacco harvesters has increased from $6.70 to $6.85 per hour. Students under 18 years of age who work not more than 28 hours in a week or during a school holiday to harvest fruit, vegetables or tobacco are entitled to $6.40 per hour, up from $6.25 per hour.

This regulation also included a revision of the maximum permissible deductions for room and board as in the *General Regulation*, described above, and as follows with respect to housing accommodation:

- $99.35 per week for serviced housing accommodation, up from $97.15 per week; and
- $73.30 per week for housing accommodation, up from 71.70 per week.

Quebec has raised its minimum wages on October 1, 1994, by amendment to the *Regulation respecting labour standards* under the *Act respecting labour standards*. The general minimum wage has increased to $6.00 per hour, from $5.85. The rate payable to employees who usually receive gratuities has increased from $5.13 to $5.28 per hour and that payable to domestic workers who reside in their employer's home has increased from $227 to $233 per week.

Quebec has also published a draft regulation announcing its intention to amend the minimum wage provisions of the *Regulation respecting labour standards*, effective October 1, 1995. The general minimum wage will increase to $6.45 per hour, from $6.00, and the rate payable to employees who usually receive gratuities will increase from $5.28 to $5.73 per hour. Effective on the same date, the minimum wage payable to domestic workers who reside in their employer's home will increase from $233 to $250 per week, and their standard workweek will be reduced from 53 to 51 hours.

The **Yukon Territory** amended its *Minimum Wage Order* under the *Employment Standards Act*, in order to increase the minimum hourly rate from $6.24 to $6.72 per hour, effective October 1, 1994, and to $6.86 per hour, effective October 1, 1995.

E. Pay Equity

Ontario adopted the *Statute Law Amendment Act (Government Management and Services), 1994*, which among other things, amended the *Pay Equity Act* to enable public sector employers created between January 1, 1988 and July 1, 1993 to phase-in pay equity adjustments in compensation in the same way that pre-1988 employers can. This also allows

them to use the "proportional value method of comparison", and require some of them to use the "proxy method of comparison", to determine whether pay equity exists in their workplace. These amendments came into force on December 9, 1994.

Prince Edward Island adopted Bill 27, *An Act to amend the Pay Equity Act* (S.P.E.I. 1995, ch. 28), in order to remove the reference to the obligation to maintain pay equity in the Public Service, once achieved. The prohibition against establishing or maintaining discriminatory pay rates is amended by removing the words "or maintain". In addition, the Act removes the right to lodge a complaint for failing to maintain pay equity, once achieved. Moreover, the Act replaces the requirement to report to the Minister every six months by one requiring to report "upon request". This Act came into force on May 4, 1995.

F. Proposed Legislation

On December 6, 1994, the **federal government** introduced Bill C- 62, the *Regulatory Efficiency Act*. This new regulatory reform tool would provide that where businesses or individuals find new and more efficient ways to comply with government regulations, they could seek permission to implement them by presenting the government with a proposed compliance plan. If the proposal fully respects the public interest and the objectives of the statutes, the Act would enable the government to enter into agreements to permit their use. The Act would also allow certain departments to enter into agreements with other government agencies, including provincial and foreign governments, concerning the administration of federal regulations.

The Act would apply only to specified regulations, designated by regulation after pre-publication in the *Canada Gazette* and tabling in the House of Commons and in the Senate. In addition, specific terms and conditions would be set on how the Act would apply to those designated regulations.

The Minister responsible for a designated regulation would be required to publish in the *Canada Gazette* the criteria for evaluating and the procedures for obtaining approval of a proposed compliance plan. After receipt of a proposed compliance plan, the Minister would be required to make all reasonable efforts to consult with the persons, governments or governmental agencies affected by the change. In certain cases, a notice of a compliance plan would be published in the *Canada Gazette* at least 60 days before it is approved. In all cases, a notice of a compliance plan would be published in the *Canada Gazette* within 60 days of its approval.

The approval of any compliance plan could be cancelled if its objectives are being compromised and penalties for breaching a compliance plan would correspond to those that would be imposed if the regulation it replaced had been breached.

On December 12, 1994, the federal government also introduced a new *Employment Equity Act* (Bill C-64), which would replace the existing Act. Bill C-64 would provide several new measures, including the following:

- expanding coverage to include the federal public service, agencies and commissions;

- clarifying existing employer obligations to implement employment equity;
- ensuring that the requirements of the Federal Contractors Program are comparable to those under the *Employment Equity Act*.
- empowering the Canadian Human Rights Commission to ensure compliance of all public and private sector employers covered by the legislation by enabling it, among other things, to conduct audits; and
- providing that the Canadian Human Rights Tribunal (to be named the Employment Equity Review Tribunal when hearing employment equity cases) hear requests from employers to review directions received from the Commission or applications from the Commission to confirm a direction given to an employer who has failed to comply. The decisions of the Tribunal would be final and binding, except for judicial reviews initiated under the *Federal Court Act*.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

Three Acts, which were described in the *Highlights of Major Developments in Labour Legislation 1993-1994*, were brought into force.

In **Alberta**, the *Labour Boards Amalgamation Act* (Bill 1) was proclaimed into force on September 1, 1994.

In **New Brunswick**, the sections of the *Labour and Employment Board Act* (Bill 59) providing for the creation of a Labour and Employment Board were brought into force on August 15, 1994. Other sections dealing with its duties, functions and powers came into force on November 14, 1994.

In **Saskatchewan**, the *Trade Union Amendment Act, 1994* was brought into force on October 28, 1994, except for an amendment enacting subsection 26.6(2). This subsection provides that where the Minister or the Labour Relations Board is required to appoint an arbitrator pursuant to the *Trade Union Act* or a collective agreement, that appointment must be made from a list of designated arbitrators to be established by the government after consultation with labour organizations and employer associations.

B. Public and Parapublic Sectors

In **British Columbia**, the *Fire and Police Services Collective Bargaining Act* took effect on June 29, 1995. This Act provides that if a firefighters' union or a police officers' union and an employer have bargained collectively and have failed to conclude or renew a collective agreement, the trade union or the employer may apply to the Minister of Skills, Training and Labour for an order that the dispute be resolved by arbitration.

The Minister may direct that the dispute be resolved by arbitration if a mediation officer has been appointed (i.e. under section 74 of the *Labour Relations Code*) and has conferred with the parties, and the associate chair of the mediation division of the Labour Relations Board has made a report to the Minister which:

- sets out the matters on which the parties have agreed and those that remain in dispute;
- indicates whether in his/her opinion the party seeking arbitration has made every reasonable effort to reach a collective agreement; and
- states whether in his/her opinion the dispute or some elements of it should be resolved by using the final offer selection method.

If the Minister directs that the dispute be resolved by arbitration, no strike or lockout may be declared, and if one is in progress, it must be terminated immediately.

An arbitrator or arbitration board may encourage settlement of the dispute and, with the agreement of the parties, may use mediation or other procedures to achieve this at any time during the arbitral proceedings.

In **Alberta**, the *Managerial Exclusion Act* was assented to on April 24, 1995. Effective on that date, the Act provides that the Labour Relations Board may exclude from a bargaining unit firefighters who, in its opinion, exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations. The Board did not previously have this power under the *Labour Relations Code*.

In **Saskatchewan**, the *Education Act, 1995* received royal assent on May 18, 1995. The Act, which will come into force by proclamation, governs, among other things, collective bargaining for teachers in elementary and secondary schools. The provisions it contains on that subject will replace, without significant changes, those of the current *Education Act*.

At the **federal** level, the implementation of certain provisions of the February 27, 1995 budget has entailed amendments to the *Public Sector Compensation Act*. Among other things, these amendments provide that, notwithstanding any federal Act (except the *Canadian Human Rights Act*) or any directive, policy, regulation or agreement made under such legislation, the Work Force Adjustment Directive that came into force on December 15, 1991, any term or condition of employment relating to job security or work force adjustment or any matter in relation to which the Directive may be issued or amended may not be the subject of collective bargaining, or be embodied in a collective agreement or arbitral award within the meaning of the *Public Service Staff Relations Act*, in respect of departments and other portions of the public service for which the government represented by the Treasury Board is the employer for a period of three years.

However, the Treasury Board and bargaining agents may, by agreement in writing, amend the Work Force Adjustment Directive but only as it relates to their collective agreements or arbitral awards, whether these are in force or have ceased to operate.

In addition, the Governor in Council, on the recommendation of the Treasury Board, may amend the Work Force Adjustment Directive in relation to any of the following matters:

- the suspension of the separation benefit;

- geographical limitations with respect to guaranteed offers of appointment made as a result of privatization and contracting out situations within the meaning of the Directive; and

- proceeding with a contract in a contracting out situation within the meaning of the Directive.

Any such amendment to the Work Force Adjustment Directive ceases to have effect three years after the coming into force of the above provision.

The parties to any collective agreement or arbitral award that includes a compensation plan covered by the *Public Sector Compensation Act* may, by agreement in writing, amend the terms and conditions they contain otherwise than by increasing wage rates or allowing incremental increases. No such amendment may be introduced if the Governor in Council on the recommendation of the Treasury Board, or the appropriate employer for some compensation plans, determine that the combination of all modifications made to a compensation plan directly result in any increase in total expenditures for the department or other portion of the public service of Canada (or part thereof) to which the plan relates.

All the amendments to the *Public Sector Compensation Act* mentioned previously took effect on June 22, 1995, and will cease to be in force three years after that date.

C. Emergency Legislation

In the last 12 months, two ad hoc emergency laws were adopted in the **federal** jurisdiction.

On March 16, 1995, the *West Coast Ports Operations Act, 1995* (Bill C-74) was passed to end a work stoppage and permit the resolution of a collective bargaining dispute between the Waterfront Foremen Employers Association involved in the supervision of longshoring and related operations at west coast ports and the International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514. The last collective agreement between the parties had expired on December 31, 1992.

Effective March 17, 1995, the Act required the immediate resumption of the supervision of longshoring and related operations at ports on the west coast, and provided for the appointment of a mediator-arbitrator to deal with all matters remaining in dispute between the parties. If the mediator-arbitrator was unable to bring about agreement in respect of any such matter, he/she was to render a decision after taking cognizance of the report of the conciliation commissioner released to the parties on February 10, 1995. The term of the collective agreement was extended to include the period from January 1, 1993 to a date, not earlier than December 31, 1996, fixed by the mediator-arbitrator.

All costs incurred by the Government of Canada relating to the appointment of the mediator-arbitrator and the exercise of his/her duties under the Act were considered to be debts due to the government, and could be recovered as such in any court of competent jurisdiction (i.e. one half from the employers, and one half from the union).

Nothing in the legislation restricted the right of the parties to agree to amend any provision of the collective agreement, other than a provision relating to its term.

Fines were provided for a contravention of the Act by an individual (maximum: $1,000), by an officer or representative of one of the parties (maximum: $50,000) and by the employer or union (maximum: $100,000). These fines were made applicable to each day or part of a day during which the offence continued.

On March 26, 1995, the federal government also adopted the *Maintenance of Railway Operations Act, 1995* (Bill C-77). That Act was passed to end work stoppages and permit the resolution of collective bargaining disputes between the Canadian National Railway Company, Canadian Pacific Limited and VIA Rail Canada Inc. and unions representing some 30,000 workers. The last collective agreements between the parties had expired on December 31, 1993, except for certain CN shopcraft agreements which had expired on December 31, 1991.

The Act was divided into three parts: Part I pertaining to CN Rail, Part II applying to CP Rail and Part III covering VIA Rail. Although there were some differences in the provisions contained in the three Parts, their main points were similar. They all took effect on March 27, 1995, but did not apply in respect of any collective agreement entered into in 1995 prior to the coming into force of the Act.

Effective March 27, 1995, the Act required the resumption of railway operations and related services across Canada, and provided for the extension of each collective agreement, or the continuation of the terms and conditions of employment with respect to a bargaining unit of CN shopcraft employees, until a new collective agreement between the parties came into effect.

After the coming into force of the Act, a mediation-arbitration commission had to be established for each bargaining unit of the three rail companies and the Minister of Labour was to refer to it all matters remaining in dispute. However, the Minister could defer the establishing of a commission when an employer and a union had reached a tentative agreement or had agreed to a process for the final resolution of the matters in dispute. A commission needed not be established in respect of bargaining units for which a new collective agreement was entered into. Notwithstanding the deferring of the establishment of a commission, one was established if the Minister subsequently considered that this was necessary.

The appointment of the chairperson of each commission was made by the Minister. The employer and the union representing the bargaining unit concerned had to each appoint one member to the appropriate commission. In the event any party failed to appoint a member within the prescribed time, the Minister would do so on its behalf.

Within 70 days after its establishment (or such longer period the Minister may allow), each commission was required to:

a) mediate the matters in dispute and bring about an agreement between the parties;

b) arbitrate any issues remaining in dispute following mediation (the commission was to hear the parties before rendering a decision);

c) fix the termination date of the new agreements established by the Act (not earlier than December 31, 1997); and

d) report to the Minister on the resolution of all matters.

Each commission was to be guided by the need for terms and conditions of employment that are consistent with the economic viability and competitiveness of a coast-to-coast rail system in both the short and the long term, taking into account the importance of good labour-management relations.

All costs paid by the Government of Canada with respect to the establishment of each commission and the exercise of its duties could be recovered from the parties on an equal basis in any court of competent jurisdiction. The employer and the union representing a bargaining unit in respect of which a commission was established had to each pay their own costs incurred in relation to the application of the Act, including the fees and expenses of the member of the commission who was appointed, or deemed to be appointed, by it.

Nothing in the legislation restricted the right of the parties to agree to amend any provision of any collective agreement, other than a provision relating to its term.

Fines were provided for a contravention of the Act by an individual (maximum: $1,000), by an officer or representative of one of the parties (maximum: $50,000) and by an employer or a

union (maximum: $100,000). These fines were applicable to each day or part of a day during which the offence continued.

D. Construction Industry

In **Quebec**, *An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry and other legislative provisions* (Bill 46) was adopted to modify certain components of the collective bargaining system applying in the construction industry. The Act contains, among others, the following measures:

- to provide that, in the exercise of its functions, the Construction Commission must cooperate in the fulfilment of the commitments of the Government of Quebec under intergovernmental agreements respecting labour mobility or the mutual recognition of qualifications, skills and work experience for construction trades and occupations;

- to give the Construction Commission the power to order the suspension of construction work when any person who carries out such work or causes construction work to be carried out fails to comply within the prescribed time with its request to prove to it that he/she is the holder of the appropriate licence issued under the *Building Act* and, where applicable, of the appropriate competency certificate or proof of exemption, and that any person hired to carry out construction work or whom he/she assigns to construction work is the holder of such a competency certificate or proof of exemption or of such a licence (a review of such a suspension may be requested by a concerned party within ten days of being notified of the decision) (these provisions took effect on June 28, 1995);

- to extend the scope of the Act to re-include construction work relating to buildings reserved exclusively for residential use and containing a total of eight dwellings or less, which was excluded since January 1, 1994. However, certain specialized construction work in respect of a single-family dwelling is excluded; this includes the installation of gutters, garage doors, central vacuum cleaner systems and landscaping work;

- to provide that the ratio of apprentices to journeymen in a given trade employed by the same employer may exceed for the residential sector the general standard that is prescribed and reach the ratio of one apprentice for each journeyman;

- to provide that the building commissioner (instead of a council of arbitration), on the application of any interested party, hears and settles disputes as to competency which relate to the practice of any trade or occupation, and that he/she may refer such a dispute to a building deputy-commissioner;

- to eliminate certain rules introduced in 1994 for determining the sectoral representativeness of employees' associations for collective bargaining purposes;

- to provide that the Association of Building Contractors of Quebec is the sole agent of the employers as regards common provisions found in the collective agreements of each sector of the industry, and that, in that respect, it is given its mandates by the sector-based employers' associations (it also provides them with assistance in labour relations matters);

- to provide that each sector-based employers' association is, for its sector, the sole agent of the employers as regards matters other than those addressed in common provisions found in the collective agreements of all sectors of the industry; each sector-based employers' association may, however, entrust the Association of Building Contractors of Quebec with a mandate to fulfil that function, in whole or in part, for its sector (bargaining thus takes place between the employees' associations whose representativeness is more than 50% and, according to their respective role, a sector-based employers' association or the Association of Building Contractors of Quebec);

- to stipulate that the expiry date of sector-based collective agreements is April 30 (instead of December 31) every three years, from April 30, 1995;

- to specify that a collective agreement may not introduce a provision inconsistent with the commitments of the Government of Quebec under an intergovernmental agreement respecting labour mobility;

- to allow a sector-based employers' association and one or more employees' associations whose representativeness is more than 50% to make a special agreement on the conditions of employment that will apply to a major construction project (i.e. where the parties estimate that at least 500 employees will work simultaneously at any time during the project), and provide that, except for the common provisions found in the collective agreements of all sectors of the industry, these conditions of employment may be different from those applicable in the sector concerned; and

- to grant the Construction Commission additional powers to better provide for its financing, to make allowances for regional particularities and intergovernmental agreements to which the Government of Quebec is party and to favour the access of women to, and their maintenance and greater representation on, the labour market in the construction industry.

In addition, the Act amends the *Regulation respecting the issuance of competency certificates* in order to provide that the Commission must issue, on request, an exemption from the obligation to hold an apprentice competency certificate to any person 16 years of age or older who is domiciled in the territory of a state or province having a bilateral agreement with the Government of Quebec with respect to the mutual recognition of qualifications, skills and work experience in trades and occupations in the construction industry. To obtain such an exemption, this person must hold an apprenticeship booklet issued by a body having competence to do so authorizing him/her to carry on, in that state or province, a trade that, under the agreement, corresponds to a trade for which the exemption is applied for. The person must also meet the requirements applicable to training in occupational health and safety. The exemption is valid for a term of one year and is renewable where a monthly report filed with the Commission by a registered employer establishes that the holder worked in the construction industry during the fourteen months preceding the renewal. An exemption from the obligation to hold an occupation competency certificate is provided in similar circumstances where the person making the request proves that he/she is working, or has worked, in that state or province, in the carrying out of tasks corresponding to one or more occupations recognized in Quebec as forming part of the construction industry.

An employee holding such an exemption is deemed to be domiciled in the region where the work for which he/she is hired is carried out, throughout the period of employment. This also

applies to an employee holding a journeyman competency certificate issued by the Commission who is domiciled in the territory of a state or province having a bilateral agreement with the Government of Quebec respecting the mutual recognition of qualifications, skills and work experience in trades and occupations in the construction industry.

Transitional measures are provided in order to issue, under certain conditions, with respect to the residential sector an exemption from the obligation to hold an apprentice competency certificate or an occupation competency certificate where any person proves that he/she carried out, for at least 300 hours in 1994, construction work relating to buildings reserved exclusively for residential use (containing eight dwellings or less), including related installations and equipment. In the case of workers who, in 1994, were resident in a state or province the government of which is, together with the Government of Quebec, party to an intergovernmental agreement providing for the mutual recognition of qualifications and work experience in trades and occupations in the construction industry, the 300 hours of work mentioned above can have been performed in the territory of that state or province. Such an exemption is valid until December 31, 1995.

It is specified that the amendments made to the Act must be interpreted in a manner consistent with the commitments of the Government of Quebec under an intergovernmental agreement respecting labour mobility or the mutual recognition of qualifications, skills and work experience for all construction trades and occupations.

Unless otherwise indicated, the provisions mentioned above came into force on February 8, 1995.

E. Artists and Producers

In the **federal** jurisdiction, Part II of the *Status of the Artist Act* was brought into force on May 9, 1995, except for certain sections relating to the establishment of the Canadian Artists and Producers Professional Relations Tribunal, which had taken effect on June 11, 1993. While excluding persons holding employee status under Part I of the *Canada Labour Code* or the *Public Service Staff Relations Act*, Part II of the *Status of the Artist Act* establishes a framework for collective bargaining between professional artists, who are independent contractors working in the federal jurisdiction, and producers.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Proclamations and repeals

Effective October 1, 1994, **Alberta** proclaimed in force all remaining sections of the *Safety Codes Act* (S.A. 1991, ch. S-0.5, as amended) which had not taken effect, except section 70(9), which was proclaimed in force December 15, 1994. Certain sections of the Act had previously been proclaimed on March 31, 1994 and others on April 30, 1994.

Alberta's *Administrative Items Regulation* under the *Safety Codes Act* was amended by Alta. Reg. 360/94 to, among other things, repeal the *Enforcement Regulation* (Alta. Reg. 71/79) effective December 31, 1994.

Manitoba proclaimed *An Act to Amend the Act to Protect the Health of Non-Smokers (2)*, which was described in the *Highlights of Major Developments in Labour Legislation 1993-1994*, effective October 31, 1994.

B. Legislation of General Application

Alberta further amended the *Safety Codes Act*, by passing Bill 47, which allows municipalities and accredited agencies to collect from persons who apply for, or hold certificates or permits or who apply to register, or register designs, certain levies which the Safety Codes Council is authorized by the Minister to impose for the purpose of enabling it to carry out its activities and services. The Council, established three years ago under the *Safety Codes Act* with its own administration and fee schedules, will set industry safety standards and accredit inspecting agencies. This Act also provides that, upon its coming into force, a person who is an inspector under by-laws passed pursuant to section 159(i) of the *Municipal Government Act*, is deemed to be appointed as a safety codes officer with the same powers and duties that the person had under that Act or By-law. (The *Safety Codes Act* previously provided the same treatment for inspectors appointed under the *Fire Prevention Act*, the *Uniform Building Standards Act*, the *Electrical Protection Act*, the *Elevator and Fixed Conveyances Act*, the *Gas Protection Act*, the *Plumbing and Drainage Act*, or the *Boilers and Pressure Vessels Act*). Similarly, upon the coming into force of this Act, a municipality with any powers under the above-mentioned Acts is deemed to be an accredited agency with the same powers and duties. Electrical inspectors who worked under the jurisdiction of the *Municipal Government Act* are now empowered to act as inspectors under the *Safety Codes Act*. In addition, the Minister of Labour is designated as the Minister responsible for the administration of the *Safety Codes Act*. This Act came into force on November 10, 1994.

Alberta adopted the *Administrative Items Amendment Regulation* under the *Safety Codes Act*, to give effect to various provisions of the *Safety Codes Act*. Among other things, this regulation extended the current periods of appointment of fire and building inspectors until June 1, 1995, and that of electrical, elevator and fixed conveyance, gas, plumbing and drainage inspectors until August 31, 1995. The regulation simplifies the reporting of electrical fires, contacts or accidents. It also provides for the establishment of an information system with respect to any or all matters under the Act. This regulation came into force on October 1, 1994.

Alberta's Bill 48, the *Occupational Health and Safety Amendment Act, 1994* (S.A. 1994, ch. 43), was proclaimed into force on February 17, 1995. Its purpose is to clarify the

responsibilities and obligations of "prime contractors", i.e. the principal contractor or the owner of a site. It provides that every work site must have a prime contractor responsible for ensuring compliance with the Act. In addition, the amendment defines the terms "contractor", "occupation", "owner", and "prime contractor", and establishes a process which prime contractors must follow for reporting specific types of serious injuries or accidents to the Director of Inspections. The Act also repealed Aberta's *Designation of Occupations Regulations* (Alta. Reg. 288/76) and *Designation of Serious Injury and Accident Regulation* (Alta. Reg. 298/81) under the *Occupational Health and Safety Act*, effective February 17, 1995.

Alberta adopted the *Farming and Ranching Exemption Regulation* under the *Occupational Health and Safety Act*, which exempts farming and ranching from the definition of "occupation" under the Act.

In addition, Alberta amended its *General Safety Regulation* under the *Occupational Health and Safety Act* in order to establish safe clearances from overhead power lines and to update references to safety standards established by the Canadian Standards Association (CSA), American National Standards Institute, and other similar institutions, relating to, among other things, protective headwear, fall arresting systems, cranes, hoists and suspended platforms.

Manitoba adopted the *Hearing Conservation and Noise Control Regulation* under the *Workplace Safety and Health Act*, which repeals and replaces Manitoba Regulation 103/88R by the same name. The regulation clarifies many existing requirements by making them more precise or explicit. For the most part, this regulation is a consolidation of, and is declaratory of the law contained in the former regulation. In particular, the regulation provides alternative means of dealing with exposure to sound in excess of 80 dBA and 90 dBA. The regulation requires education programs be provided to workers whose exposure level is or is likely to be in excess of the permissible levels and to their supervisors. In addition, the regulation contains new provisions concerning the licensing of industrial audiometric technicians.

New Brunswick adopted Bill 82, the *Workplace Health, Safety and Compensation Commission Act*, which establishes the Workplace Health, Safety and Compensation Commission. The new Commission replaces the New Brunswick Occupational Health and Safety Commission and the Workers' Compensation Board. It is vested with the powers and duties of the organizations it replaces and is vested with some additional responsibilities. This Act came into force, for the most part, on December 16, 1994. The remaining provisions came into force on January 1, 1995.

New Brunswick also adopted Bill 83, *An Act Respecting the Workplace Health, Safety and Compensation Commission Act*, which amends various statutes in order to replace references to the New Brunswick Occupational Health and Safety Commission and the Workers' Compensation Board with references to the new Workplace Health, Safety and Compensation Commission. This Act came into force on December 16, 1994.

Ontario adopted Bill 175, the *Statute Law Amendment Act (Government Management and Services), 1994*. Among other statutes, the *Occupational Health and Safety Act* is amended to enable the Minister of Labour to approve the establishment of a single joint health and safety committee for an employer with workplaces at more than one location. The *Occupational Health and Safety Act* is also amended to correct a drafting error in the English version of the Act which requires workers participating in a medical surveillance program to be paid only at

the premium rate. The amendment allows such a worker to be paid at "his or her regular or premium rate, as may be proper" for the time the worker spends. This Act came into force on December 9, 1994.

Ontario also adopted a *Regulation to amend the Industrial Establishments Regulation* under the *Occupational Health and Safety Act*. This regulation establishes the procedures for disconnecting, locking-out of service and tagging the power supply to electrical installations, equipment or conductors. It regulates the use of rubber gloves, mats, shields and other protective equipment to ensure protection from electrical shock and burns while performing work on live and exposed parts of an installation, equipment or conductor. In addition, it regulates work performed on electrical transmission systems or outdoor distribution systems rated at more than 750 volts. The regulation amends the provisions concerning the use of electrical equipment and tools. It also amends the definition of "chicot" to include a dead tree as well as any dead branches of a tree that may endanger a worker. This regulation came into force December 15, 1994.

The *Industrial Establishments Regulation* was further amended to review provisions concerning molten material and health and safety in foundries. The regulation provides, among other things, that every employer must develop and implement measures and procedures to prevent molten material from coming into contact with damp, rusty or cold surfaces, moisture or water, or other substances, if the contact might endanger the health or safety of workers. In doing so, the employer must consult with the health and safety committee or the health and safety representative, if any. Every employer must use engineering controls to the fullest extent possible to prevent spillage of molten material that could endanger the health or safety of workers. If the use of engineering controls is not reasonably possible, the employer must develop and implement, either in combination with engineering controls or as alternative means, other measures and procedures to prevent spillage. Adequate means of egress from all locations where workers may be exposed to molten material must be provided; the regulation requires specific means of egress from a location that is a runout, pouring or moulding pit or other working space situated below the adjacent floor level. In addition, the employer must provide an adequate emergency communication system. This regulation came into force on May 1, 1995.

On December 31, 1994, Ontario adopted the *Regulation concerning Training Programs* under the *Occupational Health and Safety Act*. This regulation requires employers to carry out the training programs necessary to enable a committee member to become a certified member pursuant to the Act. The training programs must be selected in accordance with the policies and guidelines of the Workplace Health and Safety Agency. The regulation specifies that "carry out" includes paying for the training.

Amendments were made to Ontario's *Adoption of Training Requirements Regulation* under the *Occupational Health and Safety Act* in order to recognize as valid in Ontario equivalent certificates of qualification for various specified trades issued by the Province of Québec.

The *Joint Health and Safety Committees - Exemption From Requirements - Regulation* under the Ontario *Occupational Health and Safety Act*, has established exemptions from the requirement to have certified members of the joint health and safety committee in a workplace, in accordance with subsection 9(12) of the Act. Workplaces with fewer than 20 workers are exempted. In addition, the Schedules list certain categories of workplaces in the retail and wholesale trade and in other services that are temporarily exempted. Those that employ 50 to

499 workers were exempted until July 15, 1995, while those with 20 to 49 workers were exempted until October 1, 1995. This regulation repealed and replaced Ont. Reg. 362/94.

As announced in the *Highlights of Major Developments in Labour Legislation 1993-1994* under the title "Proposed Regulations", Ontario adopted a *Regulation respecting the Criteria to be Used and Other Matters to be Considered by Adjudicators* under the *Occupational Health and Safety Act*. For the purposes of subsection 46(6) of the Act, the following criteria are prescribed for determining whether the constructor or employer has demonstrated a failure to protect the health and safety of workers:

1. The record of accidents, death, injuries and work-related illnesses in the workplace.
2. The constructor's or employer's occupational health and safety policies and the length of time they have been in place.
3. The training, communications and programs established to implement those policies, and the length of time they have been in place.
4. The constructor's or employer's health and safety record under the Act, including:
   a) complaints made to the Ministry of Labour against the constructor or employer;
   b) work refusals under section 43 of the Act;
   c) adjudicators' decisions under section 46 of the Act;
   d) work stoppages under sections 45 and 47 of the Act;
   e) the results of inspections conducted by the Ministry;
   f) convictions for contraventions of the Act or the regulations;
   g) the record of compliance with inspectors' orders.
5. Any other factor that would be reasonable to consider in the circumstances.

In addition, the regulation prescribes matters that must be considered by an adjudicator in deciding upon an application made under section 46. These include:

1. Any previous occasion on which an adjudicator found that the procedure for stopping work set out in section 45 of the Act would not be sufficient to protect the constructor's or employer's workers.
2. The constructor's or employer's course of conduct with respect to the establishment and operation of the committee and the appointment of certified members.
3. A pattern, if any, of the constructor or employer dealing in bad faith with the committee.
4. The nature and extent of the health and safety hazards at the workplace, including the risks they pose and whether adequate measures have been established to respond to them.
5. If those measures are not adequate, the length of time that would be required to establish adequate ones and the degree of intervention by an inspector that would be necessary.
6. Any other matter that would be reasonable to consider in the circumstances.

This regulation came into force on May 20, 1995.

Prince Edward Island adopted Bill 32, the *Provincial Affairs and Attorney General (Miscellaneous Amendments) Act*. Among other things, this Act increases the level of fines payable for offences under the *Occupational Health and Safety Act*. The amount of the maximum fine payable for a contravention to the Act or the regulations, or a failure to comply with an order or requirement of an officer or the Director, or an order or direction of the

Minister has been increased from $2,000 to $50,000. The amount of the maximum fine for continuing offences has been increased from $1,000 to $5,000. This Act came into force on May 4, 1995.

C. Boilers and Pressure Vessels

Alberta adopted the *Boilers Delegated Administration Regulation* under the *Government Administration Act*. This regulation provides that, under certain conditions, the powers, duties and functions of Administrator under section 54 of the *Safety Codes Act*, as well as those of a safety codes officer under several Acts and regulations (including, among others, the *Boilers and Pressure Vessels Regulations*, the *Design, Construction and Installation of Boilers and Pressure Vessels Regulations* and the *Safety Codes Act*) are delegated to the Boilers Association. The Association is authorized to impose and collect assessments, fees and charges with respect to its programs or services, and is mandated to provide advice to the Minister relating to any matter delegated to it. The Boilers Association is exonerated from legal liability where its powers, duties or functions are carried out in good faith by its directors, officers or agents, or by an accredited agency hired to carry them out on its behalf. A person who is affected by an action or decision of the Boilers Association may, when an appeal is not otherwise provided under the *Safety Codes Act*, appeal the matter to the Minister. In carrying out its powers, duties and functions, the Boilers Association must keep records and provide access to them in accordance with this regulation. It must also report to the Minister on its activities at least once a year. This regulation came into force on April 1, 1995.

Alberta also adopted the *Administration and Information Systems Regulation* under the *Safety Codes Act*, which requires an Administrator to maintain, if the Minister requests it, an information system on pressure equipment that includes information pertaining to the:

(a) registration and approval of designs for new equipment; repair and alteration procedures; welding procedures; inspection reports concerning the construction, installation, repair or maintenance of pressure equipment; refusals to register designs or to permit procedures; and the location, ownership and inspection records of such equipment;
(b) registration, testing for and issuance of certificates of competency to power engineers (as defined) and pressure welders;
(c) registration of organizations permitted to carry out activities related to pressure equipment under the Act;
(d) recording of accident or unsafe conditions investigation reports;
(e) recording of orders;
(f) recording of the issuance of variances;
(g) recording of appeals lodged under the *Boilers Delegated Administration Regulation*; and
(h) any other matter required by the Minister.

In addition to the above requirements, an information system may include more detailed records, such as copies of reports, orders and variances or records respecting the issuance of certificates, identification numbers, permits, notices and appeals. Moreover, the system may contain information concerning the payment of levies, fees and charges for any service or anything issued by the Administrator.

This regulation also provides that safety codes officers may assess candidates for the issuing of certificates of competency under the *Engineers' Regulations* or *Pressure Welders' Regulations*, evaluate the equivalency of educational requirements and of extra-provincial certificates of competency, and recommend to an Administrator the issuance of certificates. This regulation came into force on April 1, 1995.

New Brunswick amended Regulation 84/177 under the *Boiler and Pressure Vessels Act* in order to update references to standards of the American Society of Mechanical Engineers, the American National Standards Institute, the Underwriters' Laboratories of Canada, the Canadian Standards Association and the Canadian Gas Association.

Nova Scotia adopted Bill 29, *An Act Respecting Power Engineers* (S.N.S. 1994-95, ch. 8). This Act, which repeals and replaces the *Stationary Engineers Act* (R.S.N.S. 1989, ch. 440), establishes the framework for regulating the operation of boilers, boiler plants, compressor plants, pressure vessels and refrigeration plants. The Minister of Labour is charged with the general supervision and management of the Act. The Act provides for the appointment of an Inspector-Examiner and of such inspectors as may be required for ensuring compliance with the Act and its regulations. Appropriate powers of entry and inspection, as well as to consult records and collect evidence as may be required, are conferred upon inspectors.

The Act establishes the Power Engineers and Operators Board, which is composed of a professional engineer, a person representing owners, a first class power engineer representing labour organizations, a first class power engineer representing management and one other first class power engineer, as well as the Inspector-Examiner who chairs the Board. The Board advises the Minister on the administration and effectiveness of the Act and the regulations. The Board may also, on its own initiative, review and, if appropriate, revoke any decision made or action taken by the Department. In addition, an Appeal Committee, composed of three persons, is created to hear appeals as provided in the regulations.

The Minister may prescribe, by regulation, different levels of classification for a power engineer or an operator, and establish fees and examinations for obtaining certification in a particular classification. Conditions for maintaining appropriate certification may also be imposed. Moreover, the Inspector-Examiner, after consultation with his or her immediate supervisor, may suspend or revoke any certificate of qualification for any contravention to the Act or the regulations.

Similarly, the Minister may prescribe different classifications of plants. The Inspector-Examiner may attach various conditions to obtaining, maintaining or transferring the appropriate certification. Moreover, plant certification may be suspended or revoked, in the manner described above, where any contravention has occurred.

Except in certain circumstances specified in the Act, no other person than a power engineer or an operator holding the appropriate certification can perform the work duties of the class of power engineer or operator authorized by the certificate of qualification and/or plant classification.

A contravention of the Act or the regulations, or a failure to comply with an order issued by virtue of this Act or the regulations, is punishable, upon summary conviction, by the imposition of a fine not exceeding $100,000 or a term of imprisonment of up to 12 months. An additional fine of up to $5,000 per day may be imposed for each day that the non-compliance persists.

The Act empowers the Minister to make regulations respecting various aspects of its administration. The Act will come into force on a date fixed by proclamation.

Quebec also updated references to codes establishing standards for pressure vessels from the Canadian Standards Association, the American Society of Mechanical Engineers, and the American National Standards Institute, contained in the *Regulation respecting pressure vessels* under the *Act respecting pressure vessels*. The regulation also establishes new fees for certain services rendered by inspectors.

In addition, Quebec amended its *Regulation respecting stationary enginemen* under the *Act respecting stationary enginemen* in order to, among other things, update Schedules A, C and D, which respectively deal with the classification of refrigerants, the types of surveillance of stationary engines, and the classification of installations.

D. Hazardous Materials and Designated Substances

Alberta amended the *Explosives Safety Regulations* in order to designate explosives as hazardous material under the *Occupational Health and Safety Act*, to exclude coal mines and quarries from its application, and to fix at 18 years (down from 21) the minimum age of employment for employees required to handle or transport explosives.

Ontario amended its *Control of Exposure to Biological or Chemical Agents Regulation* under the *Occupational Health and Safety Act* in order to reduce the time-weighted average exposure value and the short-term exposure values of certain biological or chemical agents. This regulation came into force on October 31, 1994.

Ontario also amended its *Designated Substance - Asbestos - Regulation* under the *Occupational Health and Safety Act* with respect to threshold limit values for amosite and crocidolite. This regulation came into force on October 31, 1994.

Quebec amended its *Regulation respecting the quality of the work environment* under the *Act respecting occupational health and safety*. This regulation revises permissible exposure values for gases, dusts, fumes, vapours or mists in the work environment, for certain substances designated in Schedule A. In most cases, the regulation establishes a time-weighted average exposure value as well as a short-term exposure value. However, some designated substances do not have a specified short-term exposure value but have been assigned a ceiling value, which should never be exceeded during any length of time whatsoever. The ceiling value is indicated by the letter "C" preceding a time-weighted average exposure value.

In other cases where no short-term exposure value is specified with respect to a designated substance, excursions beyond the time-weighted average exposure are allowed and may exceed three times that value for a cumulative period not exceeding 30 minutes per day, provided the time-weighted average exposure value is not exceeded. However, no such excursion may exceed five times the time-weighted average exposure value during any length of time whatsoever.

The designation "Skin" in the Remark column of Schedule A refers to the potential significant contribution to the overall exposure by the cutaneous route. Exposure can occur by contact with a substance in suspension in the air or, of probable greater significance, by direct skin

contact with the substance. The cutaneous route includes contact with mucous membranes and the eyes.

Moreover, Schedule A classes carcinogens according to their known carcinogenic effect in humans (C1), their suspected carcinogenic effect in humans (C2), or their known carcinogenic effect in animals (C3). In this latter case, the results of studies relating to the carcinogenicity of these substances in animals are not necessarily applicable to humans.

With respect to carcinogens and to isocyanates, this regulation will require, effective September 22, 1995, employers to ensure that a worker's exposure to any substance listed in Part V of Schedule A is reduced to a minimum, even where that exposure remains within the prescribed limits.

This regulation also provides that the employer must provide to a worker, free of charge, personal protective equipment for protecting the respiratory passages included on the *NIOSH Certified Equipment List* dated September 30, 1993 and published by the National Institute for Occupational Safety and Health, where existing technology does not permit an employer to comply with the prescribed values during normal operations. The same applies during repairs outside of the workshop, during regular maintenance work and inspections or, where the technology exists but its implementation has not yet been completed. The employer must also ensure that every worker wears that equipment. The equipment must be selected, adjusted, used and cared for in accordance with CSA Standard Z94.4-93 entitled Selection, Use and Care of Respirators.

Where the employer has implemented all necessary measures to respect its obligation to reduce, at the source, the dangers to the health, safety and well-being of the workers from exposure to asbestos fibres suspended in the air and the exposure nonetheless exceeds the time-weighted average exposure value while remaining inferior to five times that value, the employer may provide to a worker, free of charge, and ensure that the worker wears it, a mask certified at a minimum FFP2, pursuant to the EN-149 Standard of the European Committee for Standardisation.

An employer cannot, however, provide a self-contained or air-supplied breathing apparatus equipped with an automatic device which interrupts or restricts the air supply in the part of the apparatus covering the face.

In addition, this regulation provides that samples of dusts, gases, fumes, vapours and mists present in the work environment must be taken and analyzed so as to obtain a degree of accuracy equal to that obtained in accordance with the methods described in the *Guide d'échantillonnage des contaminants de l'air en milieu de travail* (Guide for the sampling of airborne contaminants in the work environment) published by the Institut de recherche en santé et sécurité du travail du Québec (Quebec Occupational Health and Safety Research Institute), as amended from time to time. The strategy for sampling such contaminants must be applied in accordance with the common practices of industrial hygiene summarized in the above-mentioned guide.

Finally, this regulation provides amendments of a housekeeping nature. It came into force, except as otherwise mentioned, on September 22, 1994.

E. Safety in Mines and Mining Plants

Manitoba adopted the *Operation of Mines Regulation* under the *Workplace Safety and Health Act*. This regulation, which repealed and replaced another Manitoba regulation by the same name, extensively regulates the operation of both surface mines, and underground mines. Among other things, it establishes clear provisions relative to the duties of employers and workers, notices and records, fire protection, travelways, platforms, and ladderways, the use and care of explosives, the ventilation of mines, mobile equipment, residual water, shafts and conveyances, mine hoisting plants, open-cut workings, pits and quarries, protection near machinery, conveyors, cranes and derricks, work in confined spaces, metallurgical work, as well as the use of electricity. This regulation came into force on March 5, 1995.

The **Northwest Territories** adopted Bill 5, the *Mine Health and Safety Act*. This Act replaces the *Mining Safety Act* with a simpler Act that emphasizes the duties and responsibilities of persons engaged in mining, including owners, corporate directors, mine managers, supervisors and workers, to ensure occupational health and safety.

The Act provides for the establishment of Occupational Health and Safety Committees for mines, and sets out the responsibility of the Committees to conduct worksite inspections and to participate in inspections conducted by inspectors.

The Act permits mine employees to refuse work that could endanger the health or safety of any person. Mine owners may not discipline or discriminate against employees for actions taken in compliance with the Act.

The Act sets out the powers of inspectors to inspect or search a mine and the duties of persons at a mine to co-operate with an inspection or search. An inspector may order immediate remedial action to correct deficiencies at a mine and require the stoppage of work until the remedial action is taken. A decision of an inspector may be appealed to the chief inspector, with a further appeal to the Supreme Court.

The Act also provides for the appointment of a chief inspector and various inspectors, sets out the penalties for offences under the Act and the regulations, and provides for the enactment of regulations respecting mine health and safety. This Act will come into force by proclamation.

Ontario adopted amendments to the *Mines and Mining Plants Regulation* under the *Occupational Health and Safety Act* in order to require, among other things, notification to the Director of Occupation Health and Safety of a mine owner's intention of entering a mine that has been closed for more than three months. In addition, it amends the blasting procedures, the requirements respecting trolley lines, diesel-powered equipment, hoists and elevators, as well as hoisting ropes and shaft ropes.

F. Offshore Petroleum Operations

The **federal government** has adopted various regulations under the *Canada-Newfoundland Atlantic Accord Implementation Act* as well as a set of similar regulations under the *Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act* to establish requirements for petroleum drilling operations in the Newfoundland and the Nova Scotia

offshore area. Some of these measures relate to the safety and training of personnel, or specifically deal with oil and gas occupational health and safety within the particular context of offshore area drilling operations, geophysical operations, diving operations, petroleum production and conservation, and petroleum installations.

G. Safety and Health in Diving and Fishing Operations

British Columbia has adopted *Fishing Operations Regulations* under the *Workers' Compensation Act*, which deal with the health and safety of those working aboard licensed commercial fishing vessels. Effective January 1, 1995, they contain general requirements for a variety of subjects such as owner, master and crew member responsibilities, emergency procedures, vessel preparation, first aid, protection from falling, deck openings, propane installations, sensors and alarms, confined spaces, and immersion suits. They also contain requirements for specific fishing operations.

Ontario adopted a *Diving Operations Regulation* under the *Occupational Health and Safety Act*. This regulation applies in respect of all diving operations and functions in support of a diving operation, except training for recreational diving, snorkelling, or a diving operation undertaken voluntarily in response to an emergency situation involving danger to the life, health or safety of any person. The regulation requires notice of any diving operation to be given to the Ministry of Labour at the Diving Notice Address, Facsimile Transmission Number or Telephone Number. It establishes the duties of diving supervisors, divers and standby divers, and of divers' tenders. It establishes specific requirements respecting the choice, use and maintenance of equipment, breathing mixtures, medical procedures, S.C.U.B.A. diving, surface-supplied diving, deep diving, submersible compression chambers, saturation chambers and atmospheric diving systems, as well as the keeping of records. The regulation also deals with special hazards such as water-flow hazards, the use of explosives and diving in contaminated environments. This regulation repealed and replaced Regulation 848 of the Revised Regulations of Ontario and Ontario Regulation 514/92. This regulation came into force on December 19, 1994.

H. Safety in Other High Risk Industries or Occupations

Nova Scotia adopted Bill 30, *An Act Respecting Crane Operators*, which establishes the framework for regulating the operation of cranes. The Minister of Labour is charged with the general supervision and management of the Act. The Act provides for the appointment of a Chief Examiner and of such inspectors as may be required for ensuring compliance with the Act and its regulations. Appropriate powers of entry and inspection, as well as to consult records and collect evidence as may be required, are conferred upon inspectors. Owners of cranes must comply with every direction given pursuant to this Act or the regulations and must provide any assistance required for the purpose of inspecting or examining any crane or making an inquiry concerning any crane.

The Act establishes an Examination Committee composed of three to five persons, each of who must possess the qualifications prescribed by regulation. The Minister may appoint the Chief Examiner as chair of the Committee. The Committee's mandate essentially consists in prescribing and conducting examinations for the issuance of certificates of qualification as crane operators and reporting thereupon to the Minister each year. The Committee advises the

Minister on the administration and effectiveness of the Act and the regulations, and performs such other duties as may be prescribed. In addition, an Appeal Board, composed of three persons, is created to hear appeals from any person aggrieved by a decision of the Committee or an employee of the Department.

The Minister may prescribe, by regulation, different levels of classification for crane operators, and establish fees and examinations for obtaining certification in a particular classification. Conditions for maintaining appropriate certification may also be imposed. Moreover, the Committee may suspend, cancel or revoke any certificate of qualification for any contravention to the Act or the regulations.

Except in certain circumstances specified in the Act, no other person than a crane operator holding the appropriate certification can perform the work duties of the class of operator authorized by the certificate of qualification.

A contravention of the Act or the regulations, or a failure to comply with an order issued by virtue of this Act or the regulations, is punishable, upon summary conviction, by the imposition of a fine not exceeding $50,000 or a term of imprisonment of up to 12 months. An additional fine of up to $1,000 per day may be imposed for each day that the non-compliance persists.

The Act empowers the Minister to make regulations respecting various aspects of its administration. The Act will come into force on a date fixed by proclamation.

Ontario amended its *Construction Projects Regulation* under the *Occupational Health and Safety Act* with respect to, among other things, ladders, platforms supported by cranes and hoisting devices, and prefabricated or hydraulic support systems used in excavations. This regulation came into force on November 15, 1994.

As announced in the *Highlights of Major Developments in Labour Legislation 1993-1994*, Ontario adopted the *Firefighters - Protective Equipment - Regulation* under the *Occupational Health and Safety Act*. This regulation provides occupational health and safety protection to firefighters employed by municipal fire departments. It repeals and replaces the *Fire Fighters - Protective Equipment - Regulation* (R.R.O. 1990, Reg. 849) as well as Ontario Regulations 249/91 and 289/91. The regulation re-enacts requirements respecting head protective equipment and protective turn out clothing for protection against heat and flame contained in the former regulation.

The regulation also contains new requirements that outline the manner in which chassis mounted aerial devices used to position persons, handle materials, or discharge water must be inspected and tested, and the service records that must be kept with respect to them. In addition, requirements respecting new fire trucks have been adopted. Fire trucks put into service on or after December 15, 1995 must be equipped with an enclosed cab capable of accommodating enough seats for every firefighter travelling on the vehicle and stowage space to secure all fire fighting equipment and paraphernalia carried in the cab. Until December 15, 1999, firefighters will be permitted to travel on the tailboard of fire trucks only if specified conditions, intended to provide better safety, are met.

I. Proposed Legislation

On December 6, 1994, the **federal government** introduced Bill C-62, the *Regulatory Efficiency Act*. For a description of what this Bill contains, the reader is referred to the summary at page 14 of this document.

In addition, the federal government has pre-published in Part I of the *Canada Gazette* of June 24, 1995 proposed amendments to Part X (Hazardous Substances) of the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code*. A number of new provisions will be added to ensure the following:

- the maintenance and retention of records of hazardous substances;
- the development of written procedures for the control of hazardous substances;
- the disclosure of hazard information on labels of laboratory samples which are controlled products;
- the incorporation of provisions of the *National Fire Code of Canada* for the handling and storage of controlled products; and
- the inspection, testing and maintenance of ventilation systems designed to control the concentration of airborne hazardous substances.

The federal government also pre-published in Part I of the *Canada Gazette* of June 24, 1995 proposed amendments to the *Canada Occupational Safety and Health Regulations* with regard to removing barriers to the employment of persons with disabilities.

The new provisions will ensure the following:

- the words "alternate media" are defined, and employers are required, where necessary, to provide information, instruction, training and warnings specified in the regulations in alternate media for the benefit of persons with disabilities;
- all barricades and guardrails required by the regulations must be made highly visible;
- signs and warnings must be located at a height that is visible or a volume that is audible to persons with disabilities;
- high capacity, portable, open-frame heating devices must be so located as to be protected from accidental contact, damage or overturning;
- the employer must consult with employees having special needs in developing emergency procedures;
- the employer is required to appoint monitors, when needed, for persons who require special assistance in evacuating the building.

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Highlights of Major Developments in Labour Legislation

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HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

August 1, 1995 to July 31, 1996

I. EMPLOYMENT STANDARDS

A. Proclamations

Yukon's Bill 28, *An Act to Amend the Employment Standards Act*, which was described in the *Highlights of Major Developments in Labour Legislation 1994-1995*, was proclaimed in force, effective October 1, 1995.

In **British Columbia**, Bill 29, the *Employment Standards Act*, which was described in the *Highlights of Major Developments in Labour Legislation 1994-1995*, was brought into force. Certain sections (i.e. s.102 to 105 and s.109 (1) c)) were proclaimed, effective September 8, 1995, and the remainder of the Act was proclaimed in force on November 1, 1995.

The most salient amendments, relative to the former Act, include the streamlining of the investigative process, the establishment of the Employment Standards Tribunal, more stringent enforcement through penalties and the requirement to pay interest on unpaid wages, as well as new bereavement leave and family responsibility leave provisions.

The former *Employment Standards Act* was repealed, also effective on November 1, 1995.

B. Legislation of General Application

In **British Columbia**, effective November 1, 1995 were the repeal of the *Employment Standards Act Regulation* and the adoption of a new *Employment Standards Regulation*. Many of the previously existing provisions are contained in this new regulation. What follows is a description of the most important changes.

With respect to hours of work, this regulation sets out the flexible work schedules for employees not covered by a collective agreement, including the number of hours after which overtime is payable, for the purposes of section 37 of the Act. An Appendix to the regulation (i.e. Appendix 1) provides details on the actual work schedules, while other provisions deal with matters such as how to apply for a variance, or what constitutes appropriate notification of affected employees. Provisions of a more specific application include the requirement to pay a farm worker for hours of work in excess of 120 within a two week period at least double the regular rate of pay and the requirement to pay pro-rated holiday pay, according to the formula contained in the regulation, to employees who do not have a regular schedule of hours of work.

An interest rate payable on monies owing by an employer under section 88 (1) of the Act is established. The interest rate is set for a three month period and is equal to the prime lending rate on the first day of each successive three-month period beginning on October 1, January 1, April 1 and July 1. Similarly, the interest rate payable for monies received by the Director of Employment Standards under section 70 (5) or 113 (2) of the Act, or monies collected under a determination or an order of the Tribunal, is set at two per cent below the prime lending rate on the first day of each successive three month period.

A penalty in the amount of $500 is set for each contravention respecting a record-keeping requirement of the Act. Other provisions of the Act are itemized in various categories (or Parts), at Appendix 2 of the regulation, and repeated contraventions in each category entail an increasing amount of fines. The amounts range from a penalty of $0 for a first contravention to $150 (times the number of employees affected by the contravention) for a second, $250 (times the number of employees affected by the contravention) for a third, and to $500 (times the number of employees affected by the contravention) for a fourth or subsequent contravention.

Finally, the regulation contains a number of exclusions of various categories of workers from all or parts of the Act.

In **Ontario**, Bill 7, the *Labour Relations and Employment Statute Law Amendment Act, 1995,* has brought a number of changes to the *Employment Standards Act*.

There has been a change in the provisions of the *Employment Standards Act* applying in situations where the provider of certain types of services at a building is replaced by another employer providing substantially similar services (these include building cleaning services, food services and security services). The change removes the obligation of the new service provider to offer available positions to those employed by the previous employer at the premises. When the new service provider hires an employee of the previous employer to provide the services, entitlements based on length of service continue to accrue as if there had been no change in employer; the previous employer does not have to assume the cost of termination and severance pay, but must pay to the employee the amount of any earned vacation pay . If the new service provider does not hire an employee of the previous employer, he\she is responsible for termination and severance pay. This change was made retroactive to October 31, 1995.

Provisions governing an employee's right to termination pay and severance pay have also been amended to apply to situations where the termination occurs by operation of law in specified circumstances such as bankruptcy, insolvency or any operations of the employer being placed in receivership. This change was made retroactive to September 7, 1995.

In addition, the Employee Wage Protection Program (EWPP) has been modified. Employees making a claim under the EWPP are only able to apply for unpaid regular wages (including commissions and overtime wages), vacation pay (provided it is not based on termination pay) and holiday pay. Coverage for termination pay and severance pay is eliminated, and the maximum amount of compensation is lowered to $2,000 from $5,000. This change was made retroactive to September 7, 1995.

On April 4, 1996, regulations were adopted under the Ontario *Employment Standards Act* in order, among other things, to exempt a successor employer from its obligation to comply with the termination of employment provisions of Part XIV of the Act if the employer does not employ an employee of the previous employer. This exemption applies to the following classes of employees:

1. Employees who are actively employed in providing services at the premises but whose job duties were not primarily performed at the premises during the 13 weeks immediately preceding the day on which the successor employer begins to provide services at the premises;

2. Employees who are employed, but not actively employed, in providing services at the premises but whose job duties were not primarily performed at the premises during their most recent 13 weeks of active employment;

3. Employees who have not worked at the premises for at least 13 weeks in the 26 weeks immediately preceding the day on which the successor employer begins to provide services at the premises; and,

4. Employees who refuse an offer of employment with the successor employer that is reasonable, having regard to the terms and conditions of employment that the employees have with the previous employer before the successor employer begins to provide services at the premises.

With respect to the third category of employees, the regulations provide an extension of the 26 week period in cases where the services at the premises were temporarily discontinued and in cases where an employee was on a pregnancy or parental leave under Part XI of the Act.

The regulations also contain provisions dealing with information required to be given in certain circumstances.

In **Manitoba**, the *Payment of Wages Fund Regulation* under the *Payment of Wages Act* was repealed effective April 1, 1996. As a result, payments made out of the Payment of Wages Fund in respect of unpaid wages due to employees have been discontinued.

On May 24, 1996, **Alberta** adopted Bill 29, the *Employment Standards Code*, which, when proclaimed into force, will replace the existing *Employment Standards Code*. The new Code is essentially a reorganization of the existing employment standards provisions and includes the following amendments:

- The application of the Code is extended to employers and employees covered by the *Public Service Employee Relations Act*.

- The provisions dealing with the payment of earnings upon termination of employment provide that an employee's earnings must be paid not later than 3 days after the last day of employment if the employer terminates the employee's employment by giving termination notice, termination pay or a combination of both. The 3 day limit also applies if the employee terminates employment by giving the required termination notice.

- There is no longer a need to notify the Director of employment standards prior to requiring or permitting a compressed work week arrangement. However, the new Code establishes requirements for a compressed work week schedule.

- The Code includes provisions for calculating overtime pay and general holiday pay for employees paid on commission or other incentive-based remuneration. There is also a new provision to determine general holiday pay entitlements for an employee who works an irregular schedule.

- The Code provides that an employer may pay vacation pay at any time but no later than the next regularly scheduled pay-day after the employee starts his or her annual vacation. Also, if vacation pay has not been fully paid to an employee before the annual vacation starts, the employee may request the employer to pay vacation pay at least one day before the vacation starts and the employer must comply with the request.

- The Code contains sections dealing with termination pay in cases where there is a collective agreement containing recall rights for employees following layoff.

- The Code provides for the appointment of a Registrar of Appeals.

- The Code gives the Minister of Labour the discretion to establish a code for the ethical conduct of umpires.

- There is a provision that an action for damages cannot be brought against the Director of Employment Standards, an employment standards officer, the Registrar of Appeals and umpires for anything done or not done in good faith in the performance or exercise of their functions, powers or duties.

- The Code establishes alternative dispute resolution provisions to resolve complaints or concerns arising under the legislation.

- The Code provides that a prospective employment standards officer must meet competency and eligibility requirements in order to be certified as eligible for appointment.

- There are new complaint and appeal provisions including a prohibition to charge fees for filing or investigating a complaint, specifying the circumstances where an officer may refer a complaint to the Director, an increase in the amount of time to appeal to the Director or to the Umpire from 15 days to 21 days and the power of the Director to make an order for reinstatement or compensation.

- There are also new provisions dealing with proceedings before an umpire including the possibility of holding appeals through video-conference or electronic conferencing.

In the **federal** jurisdiction, Bill C-31, the *Budget Implementation Act, 1996*, which took effect on June 20, 1996, has amended the *Canada Labour Code* to provide for continuity of employment for the purposes of the application of Part III of the Code when there is a transfer of activities or services from the federal public service to a corporation or any federal work, undertaking or business to which Part III applies.

With respect to legislation that has been introduced but not yet adopted, Bill 49, *An Act to improve the Employment Standards Act*, was tabled in **Ontario** on May 13, 1996. The amendments would, among other things, enable employers and employees to negotiate changes to legislated standards (i.e. severance pay, hours of work, overtime pay, public holidays and vacation with pay) as long as they, as a package, provide greater rights than those in the Act; clarify that entitlement to vacation time and vacation pay is based upon 12 months of employment, whether or not the employment is active; include pregnancy leave and parental leave in the calculation of the length of employment or length of service; prohibit the filing of

certain complaints dealing with the same matter through both the Ministry and the Courts; oblige an employee covered by a collective agreement to resolve employment standards complaints through the collective agreement as if the Act formed part of that agreement; limit the maximum amount of an order for wages owing to the employee to $10,000; extend from 15 to 45 days the delay to file an application for review of an employment standards officer's order, or of a refusal to issue an order; enable a private debt collector to collect money owing under the Act; and, reduce the limitation period to recover money that became due from 2 years to 6 months.

In **Quebec**, on May 15, 1996, the Minister of Labour tabled Bill 31, *An Act to amend the Act respecting labour standards*. Among other things, the amendments would enable the Labour Standards Commission to represent employees dismissed without good and sufficient cause. Furthermore, where the Commission represents an employee in such a case or, where it exercises a remedy for prohibited practices, it would be entitled to require a monetary contribution from the employee. The government would have the power, by regulation, to determine the amount of the contribution that may be required from an employee.

In addition, in **Manitoba**, the Labour Minister tabled Bill 50, the *Remembrance Day Amendment Act* on May 16, 1996. The amendments provide, among other things, that specific provisions of the *Employment Standards Act* (i.e. the right to refuse to work on Sunday and prohibition against discharge for refusing work) would apply in cases where an employee in a retail business establishment refuses to work on Remembrance Day. Also, some provisions of the *Employment Standards Act* dealing with general holidays would apply to an employee that is required to work on Remembrance Day.

C. Minimum Wages

In **Quebec**, effective October 1, 1995, the general minimum wage was increased to $6.45 per hour, from $6.00, and the rate payable to employees who usually receive gratuities was increased from $5.28 to $5.73 per hour. Effective on the same date, the minimum wage payable to domestic workers who reside in their employer's home was increased from $233 for a workweek of 53 hours to $250 for a workweek of 51 hours.

Quebec has also published a draft regulation announcing that the general minimum wage will increase from $6.45 to $6.70 per hour on October 1, 1996. Also effective October 1, 1996, the rate payable to employees who usually receive gratuities will increase from $5.73 to $5.95 per hour and the minimum wage payable to domestic workers who reside in their employer's home will increase from $250 to $260 per week.

In addition, effective November 1, 1996, the maximum amounts an employer may charge an employee for room and/or board will be raised as follows:

- $1.50 per meal, to a maximum of $20.00 per week;
- $20.00 per week for a room;
- $40.00 per week for both room and board.

In **New Brunswick**, the general minimum wage rate was raised from $5.00 to $5.25 per hour, effective January 1, 1996, and to $5.50 per hour, effective July 1, 1996. These rates are established with respect to a maximum of 44 hours of work in a week. The rate payable for hours of work in excess of 44 was set at $7.88 per hour, effective January 1, 1996, and $8.25 per hour, effective July 1, 1996.

Wages paid to piece workers cannot be less than the minimum wage for the number of hours actually worked during a pay period. The minimum wage for employees whose hours of work are unverifiable and who are not strictly employed on a commission basis was set at $231.00 per week, effective January 1, 1996, and at $242.00 per week, effective July 1, 1996. No amount can be deducted from the minimum wage for board and lodging which was not furnished by the employer.

In **British Columbia**, the *Employment Standards Act Regulation* was amended, effective March 1, 1996, to increase the minimum wage for farm workers employed on a piecework basis to hand harvest certain crops, which, effective February 16, 1996, include daffodils.

In **Prince Edward Island**, the minimum wage was increased from $4.75 to $5.15 an hour on September 1, 1996 and will be raised to $5.40 an hour on September 1, 1997.

In the **federal** jurisdiction, effective July 17, 1996, the *Minimum Hourly Wage Order, 1996* under the *Canada Labour Code* has increased the minimum hourly wage payable to employees seventeen years of age and over in order to align it to the general minimum wage rates set in the provinces and in the territories at that date.

Similarly, as a result of an amendment to the *Canada Labour Standards Regulations* under the *Canada Labour Code*, which took effect on July 1, 1996, the federal minimum hourly wage payable to employees under the age of seventeen has been increased in order to align it to the general minimum wage rates set in the provinces and in the territories.

In **Nova Scotia**, *Minimum Wage Orders* under the *Labour Standards Code* have been adopted to establish the general minimum wage and the minimum wage in road building and heavy construction as well as in logging and forestry. They repeal the previous minimum wage Orders and will take effect on October 1, 1996.

The general minimum wage rate will increase from $5.15 to $5.35 an hour effective October 1, 1996 and to $5.50 an hour effective February 1, 1997. The rate for inexperienced employees (i.e. those who have not worked in that kind of employment for three months or more) will increase from $4.70 to $4.90 and hour effective October 1, 1996 and to $5.05 an hour effective February 1, 1997. The maximum deductions for board and lodging will be established at $49.10 per week, effective October 1, 1996 and at $50.45 per week, effective February 1, 1997; for board only, at $39.70 per week (October 1, 1996) and $40.80 per week (February 1, 1997); for lodging only, at $11.05 per week (October 1, 1996) and $11.35 per week (February 1, 1997); and for single meals, at $2.55 (October 1, 1996) and $2.60 (February 1, 1997).

Other parts of the previous general minimum wage order will largely remain unchanged.

The minimum wage rate payable to persons engaged in road building and heavy construction work will be set at $5.35 an hour effective October 1, 1996 and at $5.50 an hour effective February 1, 1997.

The minimum wage rate payable to workers employed in a logging or forest operation will be, effective October 1, 1996 and February 1, 1997 respectively, $5.35 and $5.50 an hour for time workers and, $1,045.00 and $1,075.00 per month for persons who have no fixed work week or whose hours or work are unverifiable (such as camp, gate and dam guardians, cooks and kitchen employees, stable hands, watch employees, fire rangers and wardens). The maximum deductions for board and lodging will be $7.85 a day effective October 1, 1996, and $8.05 a day effective February 1, 1997.

With respect to proposed changes in minimum wage legislation, on May 21, 1996, the **Newfoundland** Minister of Environment and Labour announced that the minimum wage applying to employees sixteen years of age and older is increased from $4.75 to $5.00 an hour effective September 1, 1996, and will be raised to $5.25 an hour, effective April 1, 1997.

In addition, in **Manitoba**, Bill 73, the *Construction Industry Wages Amendment Act*, was introduced on June 5, 1996. The amendments include, among other things, the following: new provisions defining "heavy construction sector", "house building sector" and "industrial, commercial and institutional sector"; the removal of persons employed in the house building sector from the application of the Act; the establishment of a Construction Industry Advisory Committee to represent the interests of the general public, consumers and other groups; and, additional factors to be considered by the wage boards when recommending wage levels.

D. Employment Equity

In **Ontario**, Bill 8, the *Job Quotas Repeal Act, 1995,* took effect on December 14, 1995, and repealed the *Employment Equity Act, 1993*. All orders made and policy directives issued by either the Employment Equity Commission or the Employment Equity Tribunal have been made of no force or effect. Agreements between an employer and the Commission entered into as part of a settlement under section 26 (2) of the *Employment Equity Act, 1993* have ceased to be binding on the parties. All proceedings and prosecutions instituted but not concluded under that Act before its repeal have been discontinued, without costs.

In addition, every person in possession of workforce information collected exclusively for the purpose of complying with section 10 of the *Employment Equity Act, 1993* must destroy that information as soon as reasonably possible.

Also, amendments made to the Ontario *Human Rights Code* in order to bring it in line with the *Employment Equity Act* were repealed. Similarly, provisions of the *Police Services Act* and of the *Education Act* establishing employment equity obligations were revoked.

At the **federal** level, Bill C-64, the *Employment Equity Act*, was assented to on December 15, 1995. That Act, which repeals the *Employment Equity Act* adopted on June 27, 1986, will come into force by order of the Governor in Council when the regulations are ready. The new legislation expands its coverage to bring most of the federal public service under its scope. It also clarifies the existing employer obligations to implement employment

equity and establishes new core obligations with regards to the preparation of an employment equity plan. The legislation empowers the Canadian Human Rights Commission to ensure compliance of the employer's obligations to implement employment equity and to resolve cases of non-compliance. The Commission may issue a direction to an employer to remedy the non-compliance and, such a direction may be subject to consideration by the Canadian Human Rights Tribunal (to be named the Employment Equity Review Tribunal when hearing employment equity cases) at the employer's request for a review of the direction or, at the Commission's request for an order confirming the direction. An order of the Tribunal is final and binding except for judicial review under the *Federal Court Act*. The new legislation also encompasses provisions dealing with monetary penalties in the event that a private sector employer fails to file a report as required by the Act.

E. Pay Equity

In **Ontario**, Bill 26, the *Savings and Restructuring Act, 1996*, has introduced amendments to the *Pay Equity Act*, taking effect on January 1, 1997. These amendments provide that the use of the proxy method of comparison for determining whether pay equity exists at an employer's workplace will be discontinued.

Until then, the minimum standard is changed for pay equity adjustments to compensation to be made by employers who use the proxy method of comparison. For the period beginning on January 1, 1994 and ending on December 31, 1996, these employers are required to make pay equity adjustments of a minimum of 3% of the total of their 1993 Ontario payroll or such lesser amount as is required to achieve pay equity. They must pay these amounts not later than September 30, 1996. Those employers who have posted a pay equity plan before January 30, 1996 are not bound by a schedule of compensation adjustments for achieving pay equity set out in the plan or other document.

The Act states that, effective January 1, 1997, pay equity will be achieved in an establishment when every female job class in the establishment has been compared to a job class or job classes under the job-to-job method of comparison or the proportional value method of comparison and any adjustment to the job rate of each female job class that is indicated by the comparison has been made.

In addition, on May 15, 1996, the **Quebec** Minister responsible for the Status of Women tabled Bill 35, the *Pay Equity Act*.

The purpose of this Act would be to eliminate the salary gap due to the systemic gender discrimination suffered by persons occupying positions in predominantly female job classes.

The Act would apply to every employer whose enterprise employs 10 or more employees in the public sector or in the private sector. An employer's obligation would, however, be determined in relation to the size of the enterprise.

An employer whose enterprise employs 10 or more employees but fewer than 50 would have to determine the adjustments in compensation required to offer the same remuneration, for work of equal value, to employees holding positions in predominantly female jobs classes as to employees holding positions in predominantly male job classes.

An employer whose enterprise employs 50 or more employees but fewer than 100 would be required to establish a pay equity plan.

An employer whose enterprise employs 100 or more employees would be required to establish a pay equity plan and, in order to enable his/her employees to participate in the establishment of a pay equity plan, the employer would be required to set up a pay equity committee including employee representatives. A pay equity committee would be composed of at least three members of which two thirds would represent the employees (at least half of such members would have to be women) and the other third would represent the employer. The representatives of the employees as a group and the representatives of the employer as a group would have one vote, respectively, within the pay committee.

A pay equity plan would be established in four stages: the identification of predominantly female job classes and of predominantly male job classes in the enterprise; the description of the method and tools used to determine the value of job classes and the development of a value determination procedure, the determination of the value of job classes, comparison between them, the valuation of differences in compensation and the determination of the required adjustments in compensation; and of the terms and conditions of payment. When there are no predominantly male job classes in an enterprise, the pay equity plan would be established in accordance with the regulations of the Pay Equity Commission (Commission de l'équité salariale).

Upon completion of the first two stages of the plan, the employer would be required to post the results in prominent places in such manner as they may be read by all the employees concerned, together with information concerning employee rights and the time within which they may be exercised. The employer would be required to do the same after completion of the last two stages of the plan.

The time allowed for the completion of a pay equity plan or for the determination of compensation adjustments would be four years. Adjustments in compensation could be spread over a maximum period of four years; in such a case, each adjustment would be of equal value. An employer could not, in order to achieve pay equity, reduce the compensation payable to any employee.

The Bill provides for the establishment of the Pay Equity Commission (Commission de l'équité salariale) which would be composed of three members, including a president, appointed by the Government; the other members would be appointed after consultations with bodies representative of employers, employees and women. The Commission would be responsible, among other things, to oversee the establishment of pay equity plans, to see that pay equity is maintained, to determine pay equity policies and guidelines, to investigate, to lend assistance to enterprises in the establishment of pay equity plans and to develop tools for enterprises, as well as to conduct research and studies on any matter related to pay equity.

Where the employer and the employees cannot agree or, upon receipt of a complaint, the Commission would investigate and endeavour to effect a settlement between the parties. If no settlement is possible, the Commission would determine the measures to be taken so that pay equity may be achieved as well as the time allotted for their implementation. If a party is dissatisfied, he/she could go to the Labour Court; for its part, if the Commission finds that the

measures it determined are not implemented to its satisfaction, the Commission would refer the matter to the Labour Court. A decision of the Labour Court is final and without appeal.

Although the Act would not apply to enterprises with fewer than 10 employees, pay equity issues would be resolved by the Commission pursuant to the Charter of Rights and Freedom.

Provisions dealing with pay equity plans or pay relativity plans completed or in progress would, with some conditions, allow such plans to be recognized as being consistent with the Act; the employer would need to show, among other things, that the plan is exempt from gender based wage discrimination.

Penal provisions would be provided for cases where the Act has been contravened.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Ontario**, Bill 7, the *Labour Relations and Employment Statute Law Amendment Act, 1995*, has, among other things, enacted a new *Labour Relations Act, 1995*, which, effective November 10, 1995. replaced the *Labour Relations Act*.

Except for a number of changes, the new Act has reinstated the labour relations provisions that existed before a reform of these provisions, commonly called Bill 40, that took effect for the most part on January 1, 1993. The provisions that were repealed dealt, among others, with the following subjects:

- the purposes of the Act (there is a new purpose clause stating a number of objectives such as to recognize the importance of workplace parties adapting to change and to encourage co-operative participation of employers and trade unions in resolving workplace issues);
- the application of the Act to some groups of professionals (i.e. lawyers, land surveyors, dentists, architects and doctors) and domestic workers employed in private homes (i.e. these categories of employees are no longer covered);
- the power of the Ontario Labour Relations Board (OLRB) to certify a trade union if it considered that the true wishes of the employees concerning representation by a trade union were not likely to be ascertained due to an unfair labour practice of the employer (this power still exists if the following conditions are met: as a result of such a contravention of the Act, a representation vote does not or would not likely reflect the true wishes of the employees, no other remedy is sufficient, including the taking of another representation vote, and there is adequate membership support for the purposes of collective bargaining);
- the right to arbitration of a first collective agreement upon a request of either party to the Minister of Labour when the union and the employer had been in a legal strike/lockout position for 30 days or more, and were unable to reach an agreement (the new Act maintains the provisions permitting an application to the OLRB to settle a first collective agreement by arbitration, after conciliation, if it finds certain criteria are satisfied) ;
- the ban against the use of employees in the bargaining unit and/or most types of replacement workers during a legal strike or lockout;
- the reinstatement of employees if the parties did not reach an agreement on reinstatement after a lockout or legal strike (a provision that existed before the adoption of Bill 40 is reinstated; it provides that, in the case of a legal strike, an employee can make an unconditional application in writing to the employer within six months from the commencement of the strike to return to work, and that there is an obligation to reinstate the employee without discrimination on terms he/she and the employer agree upon, unless the employer no longer has persons engaged in the type of work performed by the employee prior to the cessation of work);
- organizing activity or picketing on third-party property to which the public normally has access;
- the power of the OLRB to settle one or more of the terms of a collective agreement when the duty to bargain in good faith had been violated and the Board considered that other remedies were insufficient;

- the protection of bargaining rights and collective agreements in situations in which the sale of a business caused a transfer from federal to provincial jurisdiction;
- the protection of bargaining rights and collective agreements in the case of contract tendering changes with respect to services provided at a building (e.g. building cleaning services, food services and security services);
- the duty of the employers to bargain in good faith with concerned unions towards a labour adjustment plan whenever an employer was giving notice of closure or termination of 50 or more employees; and
- various clauses deemed to be part of all collective agreements (e.g. a just cause provision for discharge and discipline and a consultation provision on workplace issues).

Some provisions introduced by Bill 40 have been kept. These include some changes to the powers of the OLRB to govern its own procedures and the following which deal with the settlement of grievances: the appointment of a settlement officer before arbitration at the request of the union or employer, if the other party does not object; the provisions concerning a consensual mediation-arbitration process; and some changes dealing with the rendering of arbitration decisions.

Other provisions dealing with representation votes as well as strike and ratification votes have been modified as follows:

- Where a trade union applies for certification, a representation vote is required in every case in which at least 40% of the employees in the proposed bargaining unit appear to be members of the union at the time the application was filed. If the union loses the vote, it is not eligible to reapply for certification for one year. Analogous requirements are established when a person applies to the OLRB to terminate the bargaining rights of a union.

- Unless the OLRB directs otherwise, the representation vote must be held within five days (excluding weekends and holidays) after the application for certification is filed.

- A strike cannot take place or a proposed collective agreement (except if it has been imposed by order of the OLRB, settled by arbitration or accepted by a vote on the employer's last offer) cannot take effect unless it has been ratified by a majority of employees in the bargaining unit who participate in a secret ballot. A strike vote may take place at the earliest 30 days prior to the expiry of the collective agreement or, if no agreement has been in operation, on or after the day on which a conciliation officer is appointed. The requirement for a strike or ratification vote does not apply to employees in the construction industry.

With respect to bargaining units that were combined under the *Labour Relations Act* (as amended by Bill 40), the following measures apply:

- Where full-time and part-time employees have been put in the same bargaining unit after January 1, 1993, the employer or trade union can apply to the OLRB for separation of the bargaining unit within 90 days after November 10, 1995. The OLRB will separate the unit, unless it finds that there is a community of interest between the full-time and part-time employees. If the unit is separated, the affected employees

retain their bargaining agent and the collective agreement, if any, continues to apply to the employees in each bargaining unit.

- Where on application by the employer or trade union the OLRB has combined two or more bargaining units into a single bargaining unit under section 7 of the *Labour Relations Act* (e.g. geographically separate units), this single unit is divided into the separate bargaining units that were combined. This happens 90 days after November 10, 1995, unless the parties agree otherwise in writing. The trade union continues to represent the employees in each of the bargaining units and the collective agreement, if any, continues to apply to them.

- In the case of guards who monitor other employees or protect the property of an employer, within 90 days after November 10, 1995, an employer can apply to the OLRB for a declaration that a trade union no longer represents the guards in a bargaining unit if this union (or an organization to which it is affiliated) admits to membership persons who are not guards. Also within 90 days after the coming into force of this provision, an employer can apply to the OLRB for a declaration that guards are no longer members of a bargaining unit that includes other employees. In both cases, a declaration is issued, unless the trade union satisfies the Board that no conflict of interest exists.

In the **federal** jurisdiction, Bill C-3, *An Act to amend the Canada Labour Code (nuclear undertakings) and to make a related amendment to another Act* took effect on May 29, 1996.

This Act contains amendments to the *Canada Labour Code* and the *Non-smokers' Health Act,* which create an incorporation-by-reference mechanism that, when triggered, allows for the application of provincial labour laws to specified federal undertakings whose activities are regulated in whole or in part by the *Atomic Energy Control Act*.

Also in the federal jurisdiction, Bill C-31, the *Budget Implementation Act, 1996*, which took effect on June 20, 1996, brought amendments to the *Canada Labour Code* (Part I). These include a revision of section 47 governing the transfer of activities or services from the federal public service to a crown corporation to which Part I applies. As a result of the revision, the application of this section is broadened to cover activities or services that are transferred from the federal public service to a business to which Part I applies. In such a situation, any applicable collective agreement or arbitral award that is in force continues to apply until its term expires, subject to determinations that may be made by the Canada Labour Relations Board (for example, concerning bargaining unit structure). However, the Governor in Council has the power to exclude any portion of the federal public service from the above provisions, if this is considered to be in the public interest.

With respect to proposed legislation, in **Manitoba**, Bill 26, the *Labour Relations Amendment Act*, was tabled in the Legislature on May 21, 1996. The main proposed amendments to the *Labour Relations Act* deal with the following subjects.

Certification

Upon an application for certification by a trade union, a representation vote would be required when the Manitoba Labour Board is satisfied that, as of the date of the filing of the application, at least 40% of the employees in the proposed bargaining unit wished to have the union

represent them as their bargaining agent; if the percentage is below 40%, the Board would dismiss the application.

There would be a requirement that a representation vote be held within seven days (excluding holidays and days on which the offices of the Board are closed) after the application for certification is filed. However, the Board would have the power to extend the time for taking a vote in exceptional circumstances.

Ratification of a proposed collective agreement

All employees in the bargaining unit, not union members only as currently provided in the Act, would be entitled to participate in the mandatory vote on the acceptance or rejection of a proposed collective agreement. However, this right would not extend to replacement workers due to the temporary nature of their employment.

Votes on last offer

After the commencement of a strike or lockout, the Minister of Labour would have the authority to order a vote of the employees in the bargaining unit on the employer's last offer on all matters remaining in dispute.

Before or after the commencement of a strike or lockout, the employer could make one request for a vote of the employees in the affected unit on his/her last offer on all matters remaining in dispute. The Minister could, on any terms and conditions he/she considers necessary, order that such a vote be held immediately.

Votes on the employer's last offer ordered by the Minister would be conducted by the Board, and the result would be binding if the offer is accepted by a majority of employees participating in the vote.

Strike-related misconduct

The application of the provisions prohibiting strike-related misconduct would be expanded to specifically include unions and employees.

Use of union dues for political purposes

Every union would be required to develop and implement a process for consulting each employee in a unit governed by a collective agreement between the union and an employer about whether they wish their union dues to be used for political purposes.

An employee who objects to the use of his/her union dues for political purposes could so advise the union in writing and direct that any amount of such dues proposed to be used for political purposes be remitted by the union to a registered charity designated by him/her. The union would be required to remit the dues to the registered charity on an annual basis.

It would be an unfair labour practice for a union to fail to comply with these provisions.

Costs of mediator

One third of the remuneration and expenses of a mediator appointed to mediate a collective bargaining impasse would be paid out of the Consolidated Fund and two thirds would be paid in equal shares by the parties. At present, the government pays all the costs associated with the remuneration and expenses of a mediator.

Expedited grievance mediation/arbitration procedures

A bargaining agent could refer a grievance under a collective agreement to the Board for settlement only in the case of an employee's dismissal or suspension for a period exceeding 30 days. Such a grievance could be referred to the Board only if the grievance procedure under the collective agreement has been exhausted or 14 days have elapsed since the grievance was first brought to the attention of the other party.

Disclosure of information by unions

For each fiscal year ending on or after June 30, 1996, there would be a requirement that a union file with the Board, not later than six months after the end of its fiscal year, its audited financial statement and a compensation statement for that fiscal year. The compensation statement, certified to be correct by its auditor, would state the amount of compensation the union provides in the fiscal year, directly or indirectly, to, or for the benefit of, each of its officers and employees whose compensation was $50,000 or more (i.e. the name of the individual, his/her position(s) and total compensation). The term "compensation" would include the total value of all cash and non-cash salary, payments, allowances, bonuses, commissions and perquisites.

The financial statement of a union would set out the union's income and expenditures for the fiscal year in sufficient detail to disclose accurately the financial condition and operation of the union and the nature of its income and expenditures. A union would not be required to disclose the amount of its strike fund, but would have to indicate the expenditures made out of its strike fund during a fiscal year.

The first compensation statement filed by a union would contain, in addition to what is mentioned above, comparative information about the compensation of each affected person for the preceding fiscal year.

The Board would permit an employee in a unit for which the union is the bargaining agent to inspect its financial statement and compensation statement during normal office hours. An employee whose union is a member of an organization or federation of unions would also be permitted to inspect the financial statement and compensation statement of that organization or federation.

On payment to the Board of any reasonable administrative fee it may require, such an employee would be entitled to receive a copy of the financial statement and compensation statement of the union, and could request further information.

On receipt of a request for further information, the Board could, if it is satisfied that the financial statement or the compensation statement filed by the union does not meet the requirements prescribed by the legislation, order the union to prepare a revised financial

statement or compensation statement in any form and containing any information that the Board considers appropriate. It could also require that the revised financial statement or compensation statement be certified by an auditor.

If a union fails to file with the Board a financial statement or compensation statement or revised financial statement or compensation statement within the prescribed time, a concerned employee could ask the Board to issue an order confirming the non-filing. If the union fails to file such a statement within 30 days after being served with such an order, the Board would order the employer of the employee who sought the order to stop deducting union dues from the wages of employees in the unit affected and remitting them to the union. If at any time the union files the necessary statement, the Board would order the concerned employer to resume the check-off of union dues.

Other sanctions, including fines, could apply in the case of an organized group or federation of unions that does not file a financial statement or compensation statement or revised financial statement or compensation statement as required by the legislation.

Teachers

Persons and organizations covered by Part VIII (Collective Bargaining) of the *Public Schools Act* would remain excluded from the application of the *Labour Relations Act,* except for the provisions relating to the use of union dues for political purposes and the disclosure of information by unions.

Coming into force

This new legislation would take effect on January 1, 1997.

B. Public and Parapublic Sectors

In **British Columbia**, the *Health Sector Labour Relations Regulation* under the *Health Authorities Act* establishes five appropriate bargaining units in the health sector, and specifies that the bargaining units are multi-employer units. It also provides for the consolidation of bargaining units and the establishment of new units, and lists the trade unions which must be certified for each of the five appropriate bargaining units. No application to replace any of these certified trade unions may be made during the three years following the coming into force of the regulation. In addition, certain trade unions listed in the regulation as certified in respect of a bargaining unit are required to form associations of bargaining agents (to be certified by the Labour Relations Board) for collective bargaining purposes.

The regulation took effect on July 28, 1995, but an amendment was made and new sections were added on August 4, 1995.

In **Saskatchewan**, Bill 120, the *Health Labour Relations Reorganization Act*, took effect on July 12, 1996.

The Act provides for the appointment of a commissioner to examine the organization of labour relations between health sector employers and employees.

In conducting the examination, the commissioner must consider, among other things:

- the new employment relationships that have been (and will be) established as a result of restructuring the delivery of health services under the *Health Districts Act*;

- the need to promote integration of health care delivery; and

- the need to facilitate the development over time of provincial consistency in terms and conditions of employment amongst health sector employers and employees.

The commissioner must also make regulations reorganizing labour relations between health sector employers and employees and resolving issues arising out of that reorganization. Such regulations must be approved by the Lieutenant Governor in Council before coming into effect. A regulation made by the commissioner that has come into effect has the same force and effect as an order of the Labour Relations Board.

In case of conflict, the Act, regulations or Board orders made under it prevail over the *Trade Union Act*, any other Act, regulations made under other Acts, any Board order or collective bargaining agreement.

In **Ontario**, Bill 7, the *Labour Relations and Employment Statute Law Amendment Act, 1995*, has, among other things, amended the *Crown Employees Collective Bargaining Act, 1993.*

Ontario Public Service employees (except for essential services providers) continue to have the right to strike. However, changes to the Act include the following:

- A technical change has been made in the relationship between the *Crown Employees Collective Bargaining Act, 1993* and the labour relations statute applying to the private sector. The *Labour Relations Act, 1995* (which replaces the *Labour Relations Act*) does not directly apply to the Crown and to certain Crown agencies; it is incorporated into the *Crown Employees Collective Bargaining Act, 1993*. This change does not in itself affect the legal obligations of employers, unions and employees.

- The provision of the *Labour Relations Act* enabling the OLRB to deem employers who carry on related activities to be one employer for the purpose[illegible] the Act has been made inapplicable to the Crown (this change is retroactive to February 14, 1994, the date on which the *Crown Employees Collective Bargaining Act, 1993* came into force, and extends to the application of the corresponding provision of the new *Labour Relations Act, 1995*).

- In the case of first agreement arbitration, an arbitrator or board of arbitration cannot require an employer to guarantee a job offer to employees whose positions have been or may be eliminated or otherwise compel the employer to continue to employ them. This new rule does not apply when the employer is a designated Crown agency.

- The provision of the *Labour Relations Act* concerning successor rights when a business is sold has been made inapplicable to the Crown, to people who buy a business from, or sell a business to, the Crown and to the union representing the Crown employees concerned (this change is retroactive to October 4, 1995, and extends to the application of the corresponding provision of the new *Labour Relations Act, 1995*).

- The provisions governing essential services agreements have been modified to provide that such an agreement cannot prevent an employer from using a person to perform work during a strike or lockout.

- Also, the Act declares that a provision of any agreement providing for the determination by an arbitrator, an arbitration board or another tribunal of classification issues, including creating or amending a classification system or changing an employee's classification, is void.

Also in Ontario, Bill 26, the *Savings and Restructuring Act, 1996*, has modified the *Fire Departments Act*, the *Hospital Labour Disputes Arbitration Act*, the *Police Services Act*, the *Public Service Act* and the *School Boards and Teachers Collective Negotiations Act.*

Effective January 30, 1996, the above Acts governing collective bargaining for municipal firefighters, hospital employees, municipal police officers, the Ontario Provincial Police Force and elementary and secondary school teachers have been amended to require that, in cases of interest arbitration, the arbitrator, board of arbitration, arbitration committee or selector (in final offer selection cases) consider specific criteria when making an award. These include the following:

- The employer's ability to pay in light of its fiscal situation.

- The extent to which services may have to be reduced, in light of the decision, if current funding and taxation levels are not increased.

- The economic situation in Ontario and in the municipality (for municipal firefighters and police officers, hospital employees (i.e. the municipality where the hospital is located), and elementary or secondary teachers (i.e. the municipality or municipalities served by the school board)).

- A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.

- The employer's ability to attract and retain qualified employees.

Two other criteria already had to be considered in the case of a decision concerning municipal police forces:

- the interest and welfare of the community served by the police force, and

- any local factors affecting that community.

In **Quebec**, Bill 27, *An Act to amend the Labour Code,* became effective June 20, 1996. This Act amends certain provisions of the *Labour Code* concerning the collective bargaining dispute resolution mechanism applicable to municipal police officers and firefighters. It contains, among others, the following measures:

- to replace mandatory mediation at the request of either party by optional mediation accessible on the joint request of the parties;

- to give the parties an opportunity to jointly request a mediator-arbitrator (arbitration at the request of either party continues to apply in the absence of an agreement between the parties);

- to give the parties an opportunity, whatever form of arbitration is used, to agree on the selection of an arbitrator from a list drawn up by the Minister of Labour specifically for the arbitration of disputes involving municipal police officers and firefighters;

- to make mandatory instead of discretionary certain criteria that an arbitrator must take into account in rendering an award, specifically:

  - the conditions of employment of the other employees of the concerned municipality or municipalities which are part of an intermunicipal board;

  - the conditions of employment prevailing in similar municipalities or intermunicipal boards or in similar circumstances;

  and to add the following criteria:

  - the prevailing and anticipated wage and economic conditions in Quebec.

In **Newfoundland**, most provisions of the *Electrical Power Control Act, 1994* were proclaimed in force on January 1, 1996. This includes provisions on essential services applying to public utilities (other than those exempt from the *Public Utilities Act*) which buy or generate power and whose primary business is the sale or resale of power.

Under these provisions, a public utility and a concerned bargaining agent may jointly formulate a written statement of the number of employees in each classification in a bargaining unit who are considered to be essential employees. Once filed with the public utilities board, the statement is binding upon the parties.

If no such statement is filed, either the public utility or the bargaining agent may apply to the public utilities board to determine the number of essential employees in each classification. Within 15 days of making such an application, the public utility must provide the bargaining agent and the board with a written statement of the number of employees it considers essential in each classification. The number of employees determined to be essential by the board may not exceed that number.

A procedure permits the public utilities board to amend, at any time, an order of joint settlement by the parties or a determination it has made with respect to essential employees.

The public utility must notify in writing each employee concerned, and their bargaining agent, that he/she has been named as an essential employee. Such an employee must report for work as if a strike or lockout were not taking place. If an essential employee does not comply with this requirement, the public utility must immediately terminate his/her employment, unless it is satisfied that there are reasonable grounds for the employee not so reporting.

Also in Newfoundland, *An Act to Amend the Hydro Corporation Act, the Electrical Power Control Act, 1994, and Other Acts* was proclaimed into force on January 19, 1996.

Among other things, this Act provides for the application of the *Labour Relations Act* instead of the *Public Service Collective Bargaining Act* to Newfoundland and Labrador Hydro. All collective bargaining agreements continue in force, while they remain subject to section 11.1 of the *Public Sector Restraint Act, 1992* dealing with agreements that continue in force on the expiry of the restraint period. The certification of a trade union or council of trade unions that is a party to a collective bargaining agreement with that corporation is also continued.

In the **Northwest Territories**, Bill 2, *An Act to Amend the Public Service Act*, came into force on February 21, 1996. This Act has brought several changes to the sections of the *Public Service Act* governing the negotiation of collective agreements between the Government of the Northwest Territories and public service employees. The most significant of these changes are described below.

The Act has established three bargaining units (i.e. for employees of the Northwest Territories Power Corporation, for teachers and for other public service employees) and has clarified which positions are excluded from collective bargaining.

In addition, provisions requiring the parties to submit to arbitration differences that arise during the negotiation of a collective agreement have been repealed. New provisions permit employees who are members of a bargaining unit to strike if the following conditions are met: an essential services agreement is in effect, the employees are not required to provide essential services or to respond to an emergency situation (as described in more details below); no collective agreement covering the employees is in effect; 21 days have elapsed since the appointment of a mediator and the employees' association has delivered to the Minister responsible for the public service a strike notice of at least 48 hours. Offences are established for an illegal strike by employees or an unlawful declaration of a strike by an employees' association.

With respect to essential services, new legislation ensures a continuation of minimal services to protect the health and safety of the public, and to prevent destruction or serious deterioration of machinery, equipment or premises, or disruption of the administration of the courts. Essential services also include those services provided by the most senior employee at each power plant who has responsibility for the on-site operation of the plant. The essential services provisions stipulate that, within 20 days after notice to bargain has been given or within such further time as the parties may agree to, the employees' association and government representatives must bargain in good faith and make every reasonable effort to enter into an essential services agreement. The agreement must address the following issues: the essential services to be provided during a strike, the number of employees in the bargaining unit who are necessary to provide the essential services and the positions of those required to provide those services, the number of employees, in addition to those providing essential services, who are necessary to respond to an emergency situation and the positions of those required to perform such work, as well as a protocol on unanticipated emergency situations.

If the parties are unable to reach an essential services agreement within 20 days after notice to bargain has been given or within such further time as they may agree to, either party may give notice in writing to the other setting out the unsettled issues and stating that it wishes that the differences be submitted to arbitration. A list of persons who could act as arbitrator must be

submitted by the party giving such a notice. If the parties cannot agree on such a person within the time period mentioned above, an arbitrator is appointed by the Supreme Court on the application of either party. Within 14 days after his/her appointment or such longer period the parties may agree to, the arbitrator must make an award in respect of each issue submitted to him/her.

Once an essential services agreement (including any award) is in place, the Minister must notify each employee in the bargaining unit who, under the agreement, is required to work during a strike, and must indicate whether the employee is to provide essential services or to respond to an emergency situation. Employees who have been notified that the Minister is entitled to require them to provide essential services may not strike, while those who have been notified that they are required to respond to an emergency situation may not strike during that emergency.

In addition, after notice to bargain has been given, the Minister has the power to change any term and condition of employment applicable to a bargaining unit 21 days following the appointment of a mediator, provided an essential services agreement is in place and there is no longer a collective agreement in effect for that unit. As a consequence, the Act provides that the renewal provisions existing in collective agreements at the time it was passed no longer have any effect.

In the **federal** jurisdiction, Bill C-31, the *Budget Implementation Act, 1996*, which took effect on June 20, 1996, brought amendments to the *Public Service Staff Relations Act* (PSSRA). This includes successor rights provisions similar to those contained in Part I of the *Canada Labour Code*, as outlined previously in Section A, for portions of the federal public service transferred from Part I of Schedule I of the PSSRA (i.e. Departments and other portions of the public service in respect of which the government as represented by Treasury Board is the employer) to Part II of Schedule I of the PSSRA (i.e. portions of the public service that are separate employers).

In addition, there is a suspension for three years of the operation of certain sections of the PSSRA permitting the use of arbitration as the dispute resolution process when the parties fail to reach an agreement.

In **Manitoba**, two recently proposed laws (i.e. Bill 17 and Bill 72) would affect some aspects of collective bargaining for certain groups in the public and parapublic sectors.

Bill 17, the *Government Essential Services Act*, which has not yet been adopted, would apply to the Government of Manitoba, a union that represents its employees and every employee covered by a collective agreement between them.

The Bill contains a schedule in which services provided by certain departments are declared to be essential. In addition, other essential services could be declared by regulation. Essential services are defined as services that are necessary to enable the employer to prevent danger to life, health or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts or of legislative drafting. When a work stoppage occurs or is anticipated, the employer would notify the union with respect to the classifications, number and names of employees required to work during the work stoppage to maintain essential services. If the union believes that the essential services could be maintained using fewer employees, it could apply to the Manitoba

Labour Board for a variation of the number of employees in each classification who must work during a work stoppage. The parties are bound by an order of the Board with respect to such an application. However, on application by the employer or the union, the Board may vary the order.

An employee who contravenes the legislation would be liable to a fine not exceeding $1000, while the employer, a union or a representative of either of them would be liable to a maximum fine of $50,000. Further fines of $200 and $10,000 respectively would be applicable to each day or part of a day during which the offence continues.

With respect to Bill 72, the *Public Schools Amendment Act (2)*, it would modify the part of the Act that deals with the collective bargaining process applying to public school teachers.

Selection of procedure to reach an agreement

After notice to bargain has been given, the parties could make a joint written request to the Minister responsible for the administration of the Act to appoint either a conciliation officer or a mediator-arbitrator.

If no such joint request has been made within 60 days after notice to begin collective bargaining was given, either party could request the Minister to appoint a mediator-arbitrator.

Unless there has been a request for the appointment of a conciliation officer, the Minister would appoint a mediator-arbitrator if requested to do so.

Conciliation

The remuneration and expenses of a conciliation officer would be shared equally by the parties.

If a conciliation officer cannot bring about an agreement between the parties, the Minister would appoint an arbitrator at the request of either party or on his/her own initiative.

Arbitration

The following matters could not be referred for arbitration and could not be considered by an arbitrator or included in an arbitration award:

- the selection, appointment, assignment and transfer of teachers and principals;
- the method for evaluating the performance of teachers and principals;
- the size of classes in schools;
- the scheduling of recesses and the mid-day break.

However, subject to the *Public Schools Act* and any other Act, collective bargaining could be carried out in respect of the matters just mentioned.

With respect to matters that might reasonably be expected to have a financial effect on a school division or district, an arbitrator would be required to base his/her decision primarily on the school division's or district's ability to pay, as determined by its current revenues, including funding received from the government of Manitoba or Canada and its taxation revenue.

The arbitrator would determine the ability to pay while also taking the following factors into consideration:

- the nature and type of services that the school division or district may have to reduce in light of the decision or award, it its current revenues are not increased;

- the current economic situation in Manitoba and in the school division or district;

- a comparison between the terms and conditions of employment of the teachers in the school division or district and those of comparable employees in the public and private sectors, with primary consideration given to comparable employees in the school division or district or in the region of the province in which it is located;

- the need of the school division or district to recruit and retain qualified teachers.

An arbitrator's award is binding on the parties.

Mediation-Arbitration

Where a mediator-arbitrator is appointed as mentioned above under the heading "Selection of procedure to reach an agreement", and the parties fail to conclude or revise a collective agreement within 60 days after the appointment, either party could require the mediator-arbitrator to settle a collective agreement by arbitration, or the mediator-arbitrator could decide to proceed if he/she believes an impasse has been reached in the mediation process.

The provisions described above under the heading "Arbitration" would apply to a mediator-arbitrator.

Right to strike or to lock out

Teachers would continue to be prohibited from striking and school boards would not be permitted to declare a lockout of teachers.

Remuneration of arbitrator or mediator-arbitrator

The remuneration and expenses of an arbitrator or a mediator-arbitrator would be shared equally by the parties to a dispute.

Coming into force

The Act would apply to every collective agreement (whether new, renewed or revised) whose term of operation begins on or after January 1, 1997, and for this purpose the provisions described above would be deemed to have come into force on October 1, 1996.

C. Emergency Legislation

In **British Columbia**, Bill 21, the *Education and Health Collective Bargaining Assistance Act* came into effect on April 28, 1996 and was scheduled to be repealed on June 30, 1996 or on an earlier date set by regulation. However, there was a requirement that a collective agreement constituted under this Act remain in force until the end of the term stated in it.

Upon designation by regulations, the Act applied to a board of school trustees, a member of the Post Secondary Employers' Association or a member of the Health Employers Association of British Columbia (H.E.A.B.C) as well as to their employees and the trade unions representing them. On June 8, 1996, a regulation was adopted to designate employers accredited with the H.E.A.B.C. and several trade unions for the purposes of the Act.

It provided that, if an industrial inquiry commission, a mediation officer or a special mediator had been appointed under the *Labour Relations Code* and the parties had been provided with recommendations to settle the terms and conditions of a collective agreement, the recommendations, including any matters to which they had previously agreed, were considered to constitute the collective agreement between the parties. Such a collective agreement could be modified when both parties agreed.

D. Construction Industry

In **New Brunswick**, effective March 22, 1996, an amendment to the *Industrial Relations Act* has repealed a provision of that Act which prohibited the making of a regulation designating a construction project within a described geographic area as a major project after June 30, 1995.

E. Agriculture and Horticulture

In **Ontario**, the *Agricultural Labour Relations Act, 1994* was repealed on November 10, 1995, and agriculture as well as horticulture (except employees who work for municipalities or in silviculture, or for an employer whose primary business is not horticulture or agriculture) are excluded from the new *Labour Relations Act, 1995*. Employees are protected from reprisals for exercising their rights under the *Agricultural Labour Relations Act, 1994*, while it was in force.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

In **Ontario**, amendments to the *Occupational Health and Safety Act* contained in Bill 15, the *Workers' Compensation and Occupational Health and Safety Amendment Act, 1995*, have provided, among others, for the replacement of the board of directors of the Workplace Health and Safety Agency by an executive director appointed by the Lieutenant Governor in Council. The executive director performs the functions of the Agency and manages its operations, in accordance with the directions, if any, of the Lieutenant Governor in Council or the Minister of Labour. These amendments were made retroactive to August 23, 1995.

Also in Ontario, a *Joint Health and Safety Committees - Exemption from Requirements - Regulation* has been adopted under the *Occupational Health and Safety Act*. It provides, among other things, that every workplace with fewer than 20 workers is exempted from the requirement to ensure that at least one member of the joint health and safety committee representing the employer or constructor and at least one member representing workers are certified members. In addition, workplaces described in a Schedule contained in the regulation and having 20 or more but fewer than 500 workers were also exempted from this requirement until January 1, 1996. This date was later changed to July 1, 1996.

In **Manitoba**, some amendments have been made to the *Hearing Conservation and Noise Control Regulation* under the *Workplace Safety and Health Act*. These include updating standards for hearing protectors and procedures for the measurement of occupational noise exposure. Also, where an assessment indicates that the equivalent sound exposure level of a worker in the workplace exceeds 80 dBA but is not more than 85 dBA, and the employer takes sound control measures that have the effect of reducing the equivalent sound exposure level of some workers in the workplace to 80 dBA or less, he/she must now, in addition to meeting other requirements, implement a hearing surveillance program with respect to the remaining workers.

In **Nova Scotia**, amendments were made to regulations issued under the *Occupational Health and Safety Act*.

Under amendments to the *General Blasting Regulations*, the Board of Examiners was given discretion to make the renewal of any blaster's certificate or group of certificates conditional upon proof of completion of a Blaster's Refresher Course it has approved or to require certified blasters (whether generally, individually or by category) to complete such a course.

These amendments took effect on January 3, 1996.

In addition, new *Fall Protection and Scaffolding Regulations* have been adopted. Effective January 3, 1996, these regulations apply to all workplaces covered by the *Occupational Health and Safety Act*.

As a result of their adoption, certain provisions of the *Construction Safety Regulations* have been repealed (i.e., Part 15, "Flooring During Construction", Part 18, "Guardrails and Openings", Part 32, "Scaffolds", and Part 40, "Working Over Water"). Also, Part 15, "Scaffolds" of the *Industrial Safety Regulations* has been repealed.

Also in Nova Scotia, Bill 13, *An Act Respecting Occupational Health and Safety*, replacing the existing *Occupational Health and Safety Act,* was assented to on May 17, 1996.

The new *Occupational Health and Safety Act* introduces various changes, including the following:

- to add a provision setting out the Internal Responsibility System upon which the Act is based;

- to require the Occupational Health and Safety Division of the Department of Labour to annually submit a report on a review of the Act to the Advisory Council on Occupational Health and Safety;

- to allow the Minister to appoint, in addition to officers appointed under the *Civil Service Act,* officers not appointed under that Act to administer and enforce the *Occupational Health and Safety Act* and regulations (i.e., employees in the field of occupational health and safety with the federal government or another provincial government or their agencies, another Nova Scotia department or agency, a municipal government or an agency created by a combination of the government of Nova Scotia and other federal or provincial governments);

- to require every employer to provide such additional training of members of joint occupational health and safety committees as may be prescribed by regulations;

- to make it an obligation for an employer to establish an occupational health and safety policy or occupational health and safety program where required by the Act or the regulations;

- to provide for duties that must be carried out by a contractor (other than a dependent contractor or a constructor), a constructor, an owner, a person or body who, for gain, is a provider of an occupational health and safety service, and an architect or a professional engineer who gives advice or seals or stamps documents;

- to make it an offence for an architect or a professional engineer to give advice or seal or stamp documents negligently or incompetently thereby endangering a person at a workplace;

- to require that the curricula of trade schools or home study courses within the meaning of the *Trade Schools Regulation Act,* of programs of instruction at community colleges and of any other educational institutions or class of educational institutions designated pursuant to the regulations include instruction in the principles of occupational health and safety contained in the Act (this provision will take effect on July 1, 1999 or at an earlier date announced by proclamation);

- to provide for a means of determining the degree of responsibility carried by a person upon whom a duty is imposed pursuant to the Act;

- to make it mandatory for the Minister to establish an Occupational Health and Safety Advisory Council, and to appoint to it persons who have knowledge and experience relating to the protection and promotion of occupational health and safety;

- to require the employer to prepare and review, at least annually, a written occupational health and safety policy in consultation with any joint occupational health and safety committee, health and safety representative or the employees concerned where five or more employees are regularly employed by an employer (in the case of a constructor or contractor, this includes those directly employed and not those whose services have been contracted) (such a policy may also be required by the regulations or may be ordered by an officer) (this provision will take effect on July 1, 1997);

- to require the employer to establish and maintain a written occupational health and safety program in consultation with any joint occupational health and safety committee or health and safety representative for implementing the employer's policy, the Act and the regulations, where twenty or more employees are regularly employed by an employer (in the case of a constructor or contractor, this includes those directly employed and not those whose services have been contracted) (such a program may also be required by the regulations) ((this provision will take effect on January 1, 1998);

- to specify minimum requirements for the contents of a written occupational health and safety policy or program;

- to require a constructor to establish and maintain a joint occupational health and safety committee at a project where there are twenty or more persons employed for the project;

- to require that the time an employee takes to undergo training prescribed by regulations be deemed work time for which the employee must be paid;

- to add to the functions of committees, namely to cooperatively identify hazards to health and safety and effective systems for responding to them and audit compliance with health and safety requirements, and to advise the employer regarding a policy or program required pursuant to the Act or regulations, rather than establish the program;

- to provide that where there are five or more employees at a workplace or at a construction project and there is no requirement for a joint health and safety committee at least one health and safety representative must be selected by the employees from among those not connected with management;

- to provide that where there are fewer than five employees at a workplace, the Executive Director of Occupational Health and Safety or any person designated by the Director to act on his or her behalf, may consult with the employer and employees to obtain their views regarding whether there should be a health and safety representative at the workplace, and order that one be selected by the employees from among those not connected with management;

- to specify that a health and safety representative is entitled to paid time off from work to carry out his/her duties;

- to provide that the functions of health and safety representatives include the co-operative identification of hazards to health and safety and effective systems for responding to them and the auditing of compliance with health and safety requirements

in the workplace, the receipt and, in collaboration with the employer, the investigation and prompt disposition of matters and complaints concerning workplace health and safety, and participation in occupational health and safety inspections, inquiries and investigations;

- to provide that an employer who receives written recommendations from a committee or representative with a request to respond must do so in writing within 21 days or, if this is not reasonably practicable, to provide a reasonable explanation for the delay and indicate when the response will be forthcoming;

- to require that reports of workplace occupational health and safety inspections and of workplace occupational health and safety monitoring or tests taken at the workplace be made available to the committee, representative and employees, and that an employer reply to a request in writing for other information of a health or safety nature;

- to give an employee who exercises his/her right to refuse to work for occupational health or safety reasons the right to accompany the officer, joint health and safety committee or health and safety representative on a physical inspection of the workplace to ensure others understand the reasons for the refusal, and to clarify that payment for the refusing employee, for the period of time spent accompanying the officer, will depend on whether the refusal is a reasonable one;

- to provide that a complaint of discriminatory action or failure to pay a salary or benefit due pursuant to the Act or regulations, made by an employee not subject to a collective agreement, must be investigated by an occupational health and safety officer (this also applies if an employee, subject to a collective agreement, chooses to make a complaint to an occupational health and safety officer rather than having the complaint dealt with by arbitration under the collective agreement);

- to give officers more latitude and additional powers in exercising their duties under the Act (including the power, in certain circumstances, to order an employer, owner, contractor or constructor to obtain an expert report or have tests carried out);

- to provide that when an officer makes an order under the Act or regulations, unless the officer records in it that compliance was achieved before he/she left the workplace, the person against whom the order is made must submit to the officer a compliance notice within the time specified in the order;

- to provide the appeal process of an order or a decision made by an officer to the Director and the appeal process of an order or decision made by the Director to an appeal panel (the decision of the appeal panel is final and binding and not open to review except for error of law or jurisdiction);

- to provide that a final decision or order of an arbitrator, an officer, the Director or an appeal panel can be made an order of the Supreme Court of Nova Scotia and be enforced as such;

- to give the power of arrest without warrant in certain instances to a police officer when he/she has reasonable and probable grounds to believe that a stop work order is being contravened, and to provide for the process to be followed subsequent to such an arrest;

- to increase the following: the maximum fine from $10,000 to $250,000, the maximum term of imprisonment from twelve months to two years, and the fine for a continuing offence from $1,000 to $25,000 per day, and to provide for other sanctions in addition to fines and imprisonment;

- to permit the imposition of an additional fine in an amount equal to the estimation of monetary benefits accrued where a court is satisfied that such benefits have accrued to an offender;

- to clarify the circumstances in which an employer is not liable for the wrongdoing of a person who exercises management functions for the employer;

- to provide for additional regulation-making powers, including the power to make regulations prescribing charges to recover the cost of services pursuant to the Act and fees in relation to appeals, deviations, certificates, licences, permits, and reviews or filing of documents;

- to permit an application to be made to the Executive Director of Occupational Health and Safety for a deviation for a workplace from regulations that apply to the workplace, and to provide for the process that must be followed for such a deviation to be authorized; and,

- to repeal the *Coal Mines Regulation Act* and the *Metalliferous Mines and Quarries Regulation Act* on a date to be announced by proclamation.

Except as otherwise mentioned, this Act will take effect on January 1, 1997.

In **British Columbia**, several regulations have amended the *Industrial Health and Safety Regulations under the Workers' Compensation Act*, effective May 1, 1996.

One regulation has, among other things, introduced a special part on fall protection, and has consequently amended a number of existing fall protection provisions, such as the ones dealing with workers on platforms, scaffolds, ladders, roofs, bridges and chimneys. In addition, another regulation has repealed provisions dealing with safety-belts, safety-straps and life-lines.

A third regulation has repealed the existing noise control provisions and has added new ones. Under the new provisions, the employer must ensure that a worker is not exposed to noise levels above the exposure limits of 85 dBA Lex (1 Pa^2h) daily exposure, and to noise levels above the exposure limits of 135 dBA peak sound level. If the noise exceeds either of the exposure limits, the employer must develop and implement an effective noise control and hearing conservation program. Such a program must be in writing and must address the following issues: noise measurement, education and training, engineered noise control, hearing protection, posting of noise hazard areas, hearing tests, and annual program review. There are also other new provisions, such as the requirement to measure the noise exposure in certain circumstances, the equipment required for the noise measurement, the record keeping of the

noise exposure measurement results and, the education and training of workers whether they are below or above the exposure limits. Furthermore, the regulation clarifies existing provisions dealing with engineered noise control, hearing protection, noise hazard areas and hearing tests.

In the **federal** jurisdiction, Part X of the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code* dealing with hazardous substances stored, handled and used in the workplace has been amended and restructured. The amendments include, among others, the following: a requirement for keeping and maintaining a record of hazardous substances found in the workplace; a provision as part of a hazardous material investigation for the development of a written procedure for the control of a hazardous substance; a requirement for the inspection, testing and maintenance of ventilation systems designed to control the concentration of airborne hazardous substances; specific provisions referenced in the National Fire Code for the storage and handling of controlled products; a requirement for information to be disclosed on labels of laboratory samples which are controlled products; a provision prescribing the information to be disclosed on hazardous waste labels and signs; and provisions for the prevention of over exposure to ionizing and non-ionizing radiation in the workplace. These amendments took effect on June 13, 1996.

In **New Brunswick**, amendments have been made to the *General Regulation* under the *Occupational Health and Safety Act*. They include, among others, new provisions dealing with a fall restraint system for employees engaged in the weatherproofing of a roof and other provisions dealing with formwork and shoring, structural framework and wooden trusses.

In **Prince Edward Island**, Bill 10, *An Act to Amend the Occupational Health and Safety Act,* came into force on April 1, 1996. Its most important features consist in the abolition of the Occupational Health and Safety Council and in the transfer of the responsibilities related to the administration of the Act and the regulations to the Workers' Compensation Board. This Act also repeals the *Construction Safety Act*. The *Construction Safety Act Regulations* have also been repealed effective April 1, 1996.

In **Alberta**, the *Vinyl Chloride Monomer Regulation* under the *Occupational Health and Safety Act* was repealed on October 11, 1995.

In the **Northwest Territories**, an amendment has been made to the *General Safety Regulation* under the *Safety Act* to provide, among other things, for the adoption by reference, in respect of commercial diving operations, of the CSA Standard CAN/CSA-Z275.2-1992, *Occupational Safety Code for Diving Operations*.

B. Radiation Protection

In **Saskatchewan**, Bill 22, the *Radiation Health and Safety Amendment Act, 1996*, has amended the *Radiation Health and Safety Act, 1985* and will come into force by proclamation. The amendments include new provisions dealing with the qualifications required for managing, controlling and operating an ionizing radiation installation or any ionizing radiation equipment.

There is also a new section which entitles the minister, at his discretion, to approve and issue a code of practice for the purpose of providing practical guidance with respect to the requirements of any provision of the Act or regulations. *The Occupational Health and Safety Act, 1993* will also be amended to include references to *The Radiation Health and Safety Act, 1985*.

In **Alberta**, effective April 1, 1996, the *Radiation Health Administration Regulation* under the *Government Organization Act* has provided for the delegation, under certain conditions, of the powers, duties and functions of the Minister, the Director of Radiation Health and radiation health officers under various sections of the *Radiation Protection Act* to authorized radiation health administrative organizations, or to authorized radiation protection agencies in the case of certain powers, duties and functions of radiation health officers.

The authorized entities (i.e. authorized radiation health administrative organizations and authorized radiation protection agencies), may impose, with the approval of the Minister, assessments, fees and charges and collect such money with respect to the powers, duties and functions delegated to them under the regulation.

In order to ensure that this regulation is reviewed for ongoing relevancy and necessity, with the option that it may be readopted in its present or amended form, it is scheduled to expire on December 31, 2000.

C. Mining Safety

In **Nova Scotia**, Bill 13, the new *Occupational Health and Safety Act*, which was outlined previously in Section A, will replace, on a date to be announced by proclamation, the *Coal Mines Regulation Act* and the *Metalliferous Mines and Quarries Regulation Act*.

In the **Northwest Territories**, the *Mine Health and Safety Act*, which was assented to on October 21, 1994 and was described the *Highlights of Major Developments in Labour Legislation 1994-1995*, was brought into force on December 15, 1995.

On the same date, comprehensive *Mine Health and Safety Regulations* were adopted under the new Act. They deal with a vast number of mining health and safety issues, such as the following: ground stability design, means of egress, ventilation, water and drainage, mine plans, requirements for surface mines, examination of workings, hours of work, occupational health and safety committees established under the Act (i.e., when more than 15 persons are employed at a mine), the right of an employee to refuse to work when he\she has reasonable grounds to believe that to do so would endanger the health or safety of any person, employee training, the certification of persons carrying out certain functions, personal protective equipment, confined spaces, emergency procedures, first aid, refuge stations in underground mines, exposure levels to noise and to airborne concentrations of chemical or physical substances, ergonomic facilities, radiation hazard, mechanical equipment, mobile equipment, internal combustion engines, raise climbers, rail haulage, fuel pipelines, conveyors, winching and hoisting equipment, welding and cutting, transport of persons, communication and signalling, fire protection, electrical power system, explosives, as well as reportable incidents and dangerous occurrences.

Many previously adopted regulations dealing with various aspects of mining safety have been repealed, including the *Blasting Certificate Regulations*, the *Mine Hazardous Materials Information System Regulations*, the *Mine Occupational Health and Safety Board Regulations*, the *Mining Safety Regulations*, the *Radiation Hazard Regulations* and the *Shift Boss and Hoist Operator's Certificate Regulations*.

In **Quebec**, a *Regulation respecting pulmonary health examinations for mine workers* was adopted under the *Act respecting occupational health and safety*.

The purpose of this regulation is to ensure the medical monitoring of workers who perform work in a mine where they are exposed to asbestos or silica, in order to prevent and screen for pulmonary diseases caused by those contaminants. To this end, the regulation requires, under certain circumstances, a pre-employment pulmonary checkup as well as medical examinations during employment. An annex to the regulation provides for much of the detail of such medical monitoring, notably with respect to the medical questionnaire, the physical examination and the lung x-ray.

Also in Quebec, a regulation has amended the *Occupational Health and Safety in Mines Regulation* under the Act respecting *occupational health and safety* in order to, among other things, update references to an approval, certification or homologation of the *Bureau de normalisation du Québec* or of other standardizing bodies.

Moreover, the regulation deals with worker training, and establishes new safety standards concerning, among other things, underground excavations, haulage and service roads, dump trucks, vehicles used for the transportation of workers, rolling stock and locomotives, conveyors, compressors and compressed air tanks, as well as rappelling techniques fall-arresting devices.

In **Alberta**, the government of the province announced by proclamation the coming into effect on March 30, 1996 of section 28 of the *Occupational Health and Safety Amendment Act,* which was passed in 1979, providing for the repeal of the *Coal Mines Safety Act* and the *Quarries Regulation Act*.

Effective March 31, 1996, a comprehensive new *Mines Safety Regulation* has been adopted under the *Occupational Health and Safety Act*.

The regulation contains nine parts dealing with the following subjects: general requirements, workers training and certification, fire prevention and emergency response, electrical hazards, rubber-tired, self-propelled mobile equipment, conveyors, explosives, particular requirements for underground coal mines, and fees for licences, certificates or permits issued or services or material provided under the regulation.

The *Coal Mines Safety Regulations*, the *Order Classifying Sand and Gravel Operation as a Quarry* and the *Quarries Regulations* have been repealed.

In **Ontario**, a regulation has amended certain sections of the *Mines and Mining Plants Regulation* under the *Occupational Health and Safety Act* with respect to training programs, diamond drill holes, safety fuses, conveyors, platforms used to transport workers, free fall tests of cages, and examinations of equipment. These amendments came into force on February 29, 1996.

D. Offshore Petroleum Operations

The **federal government** has adopted several regulations under the *Canada Oil and Gas Operations Act*.

The *Canada Oil and Gas Certificate of Fitness Regulations* deal with the issuance of certificates of fitness for offshore oil and gas production, drilling, accommodation and diving installations operating in areas where the *Canada Oil and Gas Operations Act* applies.

The *Canada Oil and Gas Geophysical Operations Regulations* contain provisions dealing with occupational safety and health in geophysical operations in relation to exploration for oil and gas in any area to which the *Canada Oil and Gas Operations Act* applies. Among other things, these provisions relate to radio communication, safe working practices, smoking prohibitions, hours of work, proper training of the geophysical crew, access to the Oil and Gas Occupational Safety and Health Regulations, and the reporting and investigation of accidents.

Finally, the *Canada Oil and Gas Installations Regulations* establish the minimum safety requirements which must be met by all persons engaged in the exploration, development and production of oil and gas in areas where the *Canada Oil and Gas Operations Act* applies. They ensure that the various components that make up an installation function according to specifications.

These regulations are concerned with technical requirements in the design of the installation and take into consideration environmental factors such as waves, wind and ice at the location as well as the seabed conditions, and loading conditions. Other requirements include the following: the analysis of the installation in terms of structural integrity; appliances and systems for lifesaving; winterization of the installation to protect personnel; equipment and systems for active fire fighting; the design and protection of the helicopter deck; and quality control and assurance programs.

Regulations have also been adopted by **Nova Scotia** under the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*.

The *Nova Scotia Offshore Area Certificate of Fitness Regulations* deal with the issuance of certificates of fitness in respect of offshore oil or gas production installations, drilling installations, accommodation installations and diving installations.

Other regulations, the *Nova Scotia Offshore Area Petroleum Diving Regulations* apply to any diving operation conducted in the Nova Scotia offshore area in connection with the exploration or drilling for petroleum or its production, conservation, processing or transportation.

They deal with various subjects, including diving programs, operators of diving programs, diving contractors, diving safety specialists, diving supervisors, diving certificates, diver's duties, pilots of an atmospheric diving system as well as persons who have first aid or medical training.

E. Elevating Devices, Boilers and Pressure Vessels, and Other Installations

In **British Columbia**, a regulation has updated the *Elevating Devices Safety Regulation* under the *Elevating Devices Safety Act* and has added new provisions concerning temporary elevating devices. The changes deal notably with requirements for personnel hoists.

In **Alberta**, effective April 1, 1996, the *Elevating Devices Administration Regulation* under the *Government Organization Act* has provided for the delegation, under certain conditions, of powers, duties and functions of safety codes officers under various sections of the *Safety Codes Act* to the Elevating Devices Association (i.e. the Alberta Elevating Devices and Amusement Rides Safety Association). The powers, duties and functions of an Administrator under the *Safety Codes Act* for the purposes of registering designs in respect of elevating devices have also been delegated to the Elevating Devices Association.

The Elevating Devices Association, with respect to the powers, duties and functions delegated to it under the regulation, is authorized to impose, with the approval of the Minister responsible, assessments, fees and charges and collect such money from persons who apply for or are provided a service, material or program.

The powers, duties and functions of safety codes officers under various sections of the *Safety Codes Act* are delegated to Authorized Agencies under certain conditions when they are working pursuant to a contract with the Elevating Devices Association.

In order to ensure that this regulation is reviewed for ongoing relevancy and necessity, with the option that it may be readopted in its present or amended form, it is scheduled to expire on March 31, 2001.

In **New Brunswick**, *An Act to amend the Boiler and Pressure Vessel Act*, *An Act to amend the Electrical Installation and Inspection Act*, *An Act to amend the Elevators and Lifts Act*, and *An Act to amend the Plumbing Installation and Inspection Act* became effective March 22, 1996.

These Acts provide, among other things, that the Minister responsible can authorize the inspectors appointed under their respective Acts, other than the Chief Inspectors, to exercise the powers and duties conferred upon them by the applicable provisions of the other Acts (i.e. the *Boiler and Pressure Vessel Act*, the *Electrical Installation and Inspection Act*, the *Elevators and Lifts Act* and the *Plumbing Installation and Inspection Act*) or any regulation under those Acts, as the Minister may specify at the time of their appointment.

In **Alberta**, a regulation has amended the *Administration and Information Systems Regulation* under the *Safety Codes Act*. Among other things, it provides that an Administrator must, if requested by the Minister, maintain an information system with respect to the following:

- storage tank systems (such as those used for gasoline in gas stations), as defined in the *Alberta Fire Code*;

- Authorized Accredited Agencies, as defined in the *Authorized Accredited Agencies Regulation* under the *Government Organization Act* and agency-permits, as defined in the *Permit Regulation* under the *Safety Codes Act*;

- authorized contractors, as defined in the *Permit Regulation*, and work registered by them pursuant to that regulation.

In addition, a *Permit Regulation* was adopted under the *Safety Codes Act*. It establishes the circumstances in which a permit may or may not be required to carry out work in the following disciplines to which the *Safety Codes Act* apply: electrical work; construction, alteration, renovation or addition work to a building; work to plumbing equipment or systems or to a sewage disposal system; or work to a gas installation. Two classes of permits are established, other than those that can be issued by an accredited municipality or corporation under the Act: agency-permits and authorized contractors permits. The regulation provides for various exceptions where such permits would not be required, the information that must be included in an application, applicant eligibility and qualifications, and the renewal of permits.

In **Ontario**, Bill 54, the *Safety and Consumer Statutes Administration Act, 1996,* came into force on July 22, 1996. The intent of this legislation is to facilitate the administration of designated Acts such as the *Boilers and Pressure Vessels Act*, the *Elevating Devices Act*, the *Gasoline Handling Act* and the *Operating Engineers Act*, by delegating to designated administrative authorities certain powers and duties relating to the administration of those Acts. An administrative authority is a not-for-profit corporation without share capital that operates in Ontario, but that is not part of government (whether Ontario or any other government) or a governmental agency.

The Lieutenant Governor in Council may, by regulation, designate an Act (such as one of those mentioned above), a regulation made under it or provisions of that Act or regulation as designated legislation, and may in the same way designate one or more administrative authorities for the purpose of administering designated legislation when the Minister responsible for the Act and an administrative authority concerned have entered into an administrative agreement. The Lieutenant Governor in Council may also revoke designations in certain circumstances.

The Minister may appoint one or more removable members to the board of directors of a designated administrative authority as long as they do not constitute a majority of the board. These members may include representatives from consumer groups, business, government organizations or such other interests as the Minister determines.

A designated administrative authority may set and collect fees, administrative penalties, costs or other charges related to the administration of the designated legislation delegated to it if it does so in accordance with a process and criteria approved by the Minister and there is no conflict with any provision of the designated legislation or the regulations made under it. If there is a conflict, the administrative authority must give written notice to the Minister of the provisions of the designated legislation or the regulations that are involved in the conflict and allow 60 days to pass since the giving of the notice. The money that a designated administrative authority collects in carrying out the administration delegated to it is not public money and may be used by it in carrying out its activities in accordance with its objects or any other purpose reasonably related to its objects.

The board of a designated administrative authority must report to the Minister on a yearly basis on its activities and financial affairs. Fines are provided for a designated administrative authority and any of its directors, officers, employees or agents in the case of an offence under the Act.

Human Resources Development Canada
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Highlights of Major Developments in Labour Legislation

1996-1997

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HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

August 1, 1996 to July 31, 1997

I. EMPLOYMENT STANDARDS

A. Proclamations

Alberta proclaimed Bill 29, the *Employment Standards Code*, which was described in the *Highlights of Major Developments in Labour Legislation (1995-1996)*, effective March 1, 1997. The new Code is essentially a reorganization of the previous employment standards provisions.

B. Legislation of General Application

In **Ontario**, Bill 49, the *Employment Standards Improvement Act, 1996,* made changes to the *Employment Standards Act* to facilitate administration and enforcement of the Act and to bring greater clarity to certain provisions. The following describes the salient differences between the previous legislation and this Act.

Clarification of Entitlement of Employees regarding Pregnancy and Parental Leave

This new Act more clearly defines employers' obligations for pregnancy and parental leave under the *Employment Standards Act*. It provides that employees earn credit for both seniority and service while on pregnancy and parental leave. It also clarifies that the 12 months of employment which must be completed in order to qualify for a two week vacation include all employment, whether or not such periods are active. As a result, the 12-month period includes time spent on pregnancy, parental and other leaves.

Limitations Periods for Proceedings, Prosecutions and Appeals

Administrative changes to the *Employment Standards Act* include the following:

- Under the previous Act, proceedings and prosecutions had to be commenced within two years after the facts upon which they were based first come to the knowledge of the Director of Employment Standards. The amending Act sets out certain exceptions to the limitations period. Also, an employment standards officer may amend or rescind an order after the two-year period expires, on the consent of the affected person.

- The time to file a request for review of an employment standards officer's order, or of a refusal to issue an order, has been extended from 15 to 45 days. Certain exceptions are set out in the Act.

Restrictions on the Recovery of Money

An employment standards officer cannot issue an order with respect to a single employee for an amount greater than the $10,000 plus the 10% administration costs maximum specified in the Act, or less than the minimum amount prescribed in the regulations. Certain exceptions are set out in the Act. The Minister of Labour has not set a minimum claim amount at this time. However, the Minister will have the option, through regulation, of setting a minimum. The ministry continues to write orders for more than $10,000 in cases where reinstatement or hiring is a potential remedy under the Act. For example, reinstatement is possible when employees lose their positions after taking pregnancy or parental leave, or in the case of retail workers,

refuse to work on a Sunday or a holiday. Employees are able to go to court to settle claims above the maximum or below the minimum limits on claims under the Act. The maximum and minimum amounts do not apply with respect to wages that become due before the day on which the Act came into force.

Also, under the previous Act there was a limitation on the recovery of money in proceedings or prosecutions. The amendment provides that money cannot be recovered if it became owing to an employee more than six months before the facts upon which the proceeding or prosecution is based first came to the knowledge of the Director (instead of the two years permitted before). In cases where there are continuing violations of the same provision of the Act or contract, employees will be entitled to recover moneys owing up to one year before the facts upon which the proceeding or prosecution is based first came to the knowledge of the Director.

Avenues for Addressing Alleged Violations of the Employment Standards Act/Methods of enforcement

An employee to whom a collective agreement applies (including an employee who is not a member of a trade union) is not entitled to file a complaint under the Act. (The Director may permit an exception if he/she considers it appropriate in the circumstances.) The amendments oblige the employees covered by a collective agreement to resolve employment standards complaints through the grievance procedures provided in their collective agreement as if the Act formed part of that agreement. Therefore, the employee is bound by the decision of the trade union with respect to the decision of enforcing or not to seek enforcement of the Act. If the trade union decides not to seek enforcement of the Act, and the employee feels he/she has not been well represented by the union, he/she can still make a complaint to the Ontario Labour Relations Board. An arbitrator, a board of arbitration or the Ontario Labour Relations Board have the power to order payment of money owed to employees by their employers. If the employer cannot pay, the arbitrator's order may lead to the employee being reimbursed by the Ministry of Labour's Employee Wage Protection Program. An exception is set out in the Act, concerning decisions about "related employers". If during an arbitration an issue arises as to whether the employer to whom the collective agreement applies and another entity are one employer, the arbitrator (arbitration board or Ontario Labour Relations Board) will not make a decision concerning the related employers issue. If the arbitrator concludes that there has been a contravention of, or failure to, comply with the Act, he/she will notify the Director of Employment Standards that a related employer issue has arisen during arbitration and of any decisions made concerning the other matters in dispute. The Director may then arrange to have an employment standards officer investigate the matter.

The amendments prohibit the filing of certain complaints dealing with the same matter through both the Ministry and the Courts. An employee who files a complaint under the Act is not entitled to bring a civil action for the same matter and an employee who commences a civil action respecting specified matters is not entitled to file a complaint under the Act for the same matter. This restriction does not apply in those cases where the employee may be entitled under the Act to reinstatement to his/her former position.

An employee who has filed an employment standards claim with the Ministry has two weeks to seek legal advice and consider their options before his/her decision not to pursue the claim through the courts is considered to be final.

Powers of the Employment Standards Officer

The authority of the employment standards officer to settle complaints filed under the Act has been changed. An employment standards officer is able, with the agreement of the employer and employee, to settle a complaint without making a prior finding that wages are owing to an employee. The settlements are binding upon the parties. The employment standards officer may accept money on the employee's behalf as a result of the compromise or settlement if the person has agreed to the settlement. The officer may make an order if after a compromise or settlement the employer does not pay the amount agreed.

The officer has two years to issue an order or to refuse to issue an order. If after two years no order has been issued, the officer is deemed to have refused to issue the order. Employees may appeal a deemed refusal.

Powers of debt collectors/Use of private collection agencies

The Director of Employment Standards may appoint private sector debt collectors to collect unpaid wages, unpaid vacation pay and other money owed to employees under the Act. The collector's fees and disbursements may be added to the amount collected, if the Director authorizes it. However, the Director may not authorize a collector required to be registered under the *Collection Agencies Act* to collect disbursements.

When the Director authorizes a private debt collector to collect money owing under the Act, the Director may authorize the collector to exercise specified powers under the Act. A collector may enter into a settlement agreement on behalf of the person owed money under the Act, with the person's consent. In some circumstances, the consent of the Director to a settlement is required.

Administration

Some administrative changes and clarification have been made to the *Employment Standards Act*. Investigating officers have access to the employers' electronic records and the Ministry is able to serve notices on the parties by any form of verified delivery, including facsimiles. Claims must be filed with the Ministry on an approved form either in written or electronic form. The Act was proclaimed in force on December 1, 1996.

On April 16, 1997, **Quebec** adopted Bill 88, *An Act to amend the Act respecting labour standards as regards annual and parental leave*. This Act amends the *Act respecting labour standards* by increasing the parental leave from 34 to 52 weeks. It also enables employees having one to five years of uninterrupted service to apply for the number of days of leave without pay required to increase their annual leave to three weeks.

In addition, Quebec adopted Bill 96, *An Act to amend the Act respecting labour standards as regards the duration of a regular work week*. This Act has modified the *Act respecting labour standards* in order to progressively reduce the duration of the regular work week from 44 to 40 hours, at the rate of one hour as of October 1 every year from the year 1997 to the year 2000. The Act also contains transitional measures to govern the temporary application of every provision relating to the duration of a regular work week that is contained in a collective agreement, or an arbitration award in lieu thereof, or in a collective agreement decree in force or expired on June 19, 1997.

Lastly, Quebec adopted Bill 31, *An Act to amend the Act respecting labour standards*. The Act amended the *Labour Standards Act* to allow the Labour Standards Commission (Commission des normes du travail) to represent non unionized employees with more than three years of uninterrupted service who believe they were dismissed without good and sufficient cause. Furthermore, it provides for the annual reimbursement by the Commission of disbursements made by the Minister of Labour in connection with the exercise of remedies for dismissal without just and sufficient cause or for prohibited practice. These amendments took effect on March 20, 1997.

On December 19, 1996, **Newfoundland** brought amendments to its *Labour Standards Act* (i.e. Bill 26) to allow an employee with more than 15 years of continuous employment with the same employer to take three weeks paid vacation per year or 6% vacation pay. There was also an expansion of the list of relatives whose death gives rise to the bereavement leave to include a grandchild.

In **British Columbia**, several regulations have amended the *Employment Standards Regulation* under the *Employment Standards Act,* during the last 12 months.

A regulation, adopted on August 13, 1996, provides that farm workers involved in the hand harvesting of fruit and berry crops and employers of those farm workers are excluded from Part 5 (statutory holidays) and section 58 (vacation pay) of the Act, on condition that these employers pay those farm workers in place of a statutory holiday and vacation pay an amount for each harvest day. A section was added to the *Employment Standards Regulation* providing how the statutory holiday may be paid. The amount can be paid on the employee's scheduled pay days, by multiplying the hourly wage for the pay period by 1.036.

In addition, another regulation provides that, effective September 1, 1997, a person employed as a logging truck driver or as a logging equipment operator working in the interior area as defined by the *Timber Harvesting Contract and Subcontract Regulation,* is excluded from the application of sections 31(3) (shift change notices), 35 (maximum hours of work), and 40 and 41 (overtime wages for employees on or not on a flexible work schedule). Also, the regulation adds a requirement for employers who request or allow a logging truck driver or a logging equipment operator to work in the interior area more than 120 hours within a two week period, to pay the employee for the hours worked in excess of 120, at least double the regular wage.

A third regulation, effective March 25, 1997, excludes from the application of the *Employment Standards Act,* a person receiving income assistance or benefits under the *BC Benefits (Income Assistance) Act,* a youth allowance or benefits under the *BC Benefits (Youth Works) Act,* or a disability allowance or benefits under the *Disability Benefits Program Act*, while the person is participating in a time-limited government program that provides on-site training or work experience and is operated under one of the above-cited Acts

On August 31, 1996, **Ontario** amended the *General Regulation*, established under the *Employment Standards Act,* to exempt the workers who are participating in a workfare program, but only with respect to that part of the program that involves participating in community participation activities, from the application of the *Employment Standards Act*.

Manitoba has adopted Bill 18, *The Payment of Wages Amendment Act*. This Act provides that not only another province of Canada but also the federal government, a territory of Canada, or

the government or a state or territory of the United States, may be designated as a reciprocating jurisdiction for the purpose of enforcing in Manitoba an order, certificate or judgment made under the law of the other jurisdiction that is the equivalent of an order made or issued under the *Payment of Wages Act* for the payment of wages. The amendment took effect on November 19, 1996.

New-Brunswick amended its *Employment Standards Act* (i.e. Bill 26) on December 19, 1996, by adding provisions that permit the Lieutenant-Governor in Council to declare, by Order in Council, that a province or territory is a reciprocating province or territory for the purpose of enforcing orders, certificates or judgments for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee.

Nova-Scotia has amended its *General Regulations* established under the *Labour Standards Code*. The regulation has replaced the provision that excluded domestics from the application of the Code, with a provision stipulating that only persons employed in a private home to provide domestic service for their immediate family or who are not employed for more than 24 hours during a seven-day period are now excluded from the application of the Code. All other persons providing domestic services are now covered by the Code. Also qualified practitioners and students of professions like architecture, dentistry, law and others that used to be excluded from the Code, while they were engaged in training, are now covered by the Code but are exempted from the application of sections dealing with hours of work and dismissal or suspension without just cause. Qualified practitioners or students while engaged in training for optometry and pharmacy are excluded only from the application of section 71 (dismissal or suspension without just cause). These amendments took effect on October 1, 1996.

Saskatchewan has adopted an amendment to the *Labour Standards Regulations, 1995* pursuant to the *Labour Standards Act*. The new regulation provides for a new definition of "care provider" and amends the definition of "domestic worker". A care provider is defined as an employee who provides services in the private residence of the employer or of a member of his/her immediate family, that relate to the provision of care and supervision of a member of the employer's immediate family. The immediate family includes the spouse of an employer or a parent, grandparent, child, brother or sister of an employer or of the spouse of an employer. A domestic worker is an employee who provides services in the private residence of the employer that relate to the management and operation of that residence. The new regulations make also a distinction between a live-in care provider and a live-in domestic worker who resides in the residence in which they provide services. Under the new regulations, a live-in care provider and a live-in domestic worker are entitled to a rest period of two consecutive days in every seven days, at a time that is mutually acceptable to the employer and the employee and to minimum wages established by Part II of the Act for the first eight hours worked in one day. Where the cash value of board and lodging received by a live-in care provider or a live-in domestic worker, has not been determined by the Minimum Wage Board, the charge for room and board that an employer may make is not to exceed $ 250 per month. The new regulations also stipulate that sections 43 and 44 of the Act which relates to notice of termination and termination pay apply only to care providers who are live-in care providers.

These amendments were effective January 28, 1997.

Saskatchewan has also adopted *The Minimum Wage Board Order, 1997* under the *Labour Standards Act*. This Order has repealed and replaced three previous minimum wage board

orders (*The Minimum Wage Board Order No.2 (1981), The Minimum Wage Board Order No.3 (1981) and The Minimum Wage Board Order, 1996).* It came into force on July 18, 1997.

The Minimum Wage Board Order, 1997 has brought together, with minor modifications, the provisions of the repealed orders. However, some substantive changes have been made to provisions applying to hotels, restaurants, educational institutions, hospitals and nursing homes, except for employees and employers exempted by regulation. A provision dealing with meal period and meal charges has been removed, while another one now requires that an employer provide each employee (instead of every female employee, as stated previously) who is required or permitted to finish work between the hours of 12:30 a.m. and 7:00 a.m. with free transportation to his/her place of residence.

Alberta has adopted a new *Employment Standards Regulation* under *the Employment Standards Code*. Effective March 1, 1997, the new regulation has consolidated the text of the following 14 regulations under the *Employment Standards Code* into a single regulation:

- *Adolescents and Young Persons Employment Regulation*
- *Construction Industry and Brush Clearing (Vacation Pay and General Holiday Pay) Regulation*
- *Exemption Regulation*
- *Fees and Costs Regulation*
- *Hours of Work and Overtime Pay (Ambulance Drivers and Attendants) Regulation*
- *Hours of Work and Overtime Pay (Field Services) Regulation*
- *Hours of Work and Overtime Pay (Highway and Railway Construction and Brush Clearing) Regulation*
- *Hours of Work and Overtime Pay (Irrigation Districts) Regulation*
- *Hours of Work and Overtime Pay (Nursery Industry) Regulation*
- *Hours of Work and Overtime Pay (Oilwell Servicing) Regulation*
- *Hours of Work and Overtime Pay (Taxi Cab Industry) Regulation*
- *Hours of Work and Overtime Pay (Trucking Industry) Regulation*
- *Minimum Wage Regulation*
- *Reciprocating Provinces Regulation*

Most of the previously existing provisions are contained in the new regulation. Some changes were made to format, style and language, to bring consistency with the new *Employment Standards Code*. The following changes are the most important amendments to previous provisions: exemptions to receive notice of termination and certain exemptions for hours of work and overtime are part of the regulation instead of being part of the Code as it used to be; the fee charged for the issuance of a post-judgement third party demand and the filing of a judgement with the land titles office has been deleted; and Ontario has been added as a reciprocal jurisdiction for the collection of judgements in favour of employees owed money under employment standards legislation.

In **Ontario**, on June 3, 1997, the government has introduced Bill 136, the *Public Sector Transition Stability Act, 1997.* If approved by the legislature, that Bill will enact the *Public Sector Dispute Resolution Act, 1997* and the *Public Sector Labour Relations Transition Act, 1997*, and will, among others, amend the *Employment Standards Act.*

The provisions of the *Employment Standards Act* concerning continuity of employment following the sale of a business will be made applicable to the Crown. Also, if an employer who sells a business indicates that it is paying severance pay to an employee transferred to the

purchaser, and if the amount paid is at least equal to the amount of severance pay to which the employee would have been entitled had he/she not been transferred to the purchaser, the amount paid will be treated as severance pay under the Act.

In addition, other amendments to the *Employment Standards Act* will discontinue the Employee Wage Protection Program (EWPP), which compensates employees for unpaid wages and vacation pay up to a maximum of $2,000 (Ontario is currently the only jurisdiction in Canada with a government-funded program of this kind).

The EWPP will continue to apply with respect to wages that become due before the program is discontinued

C. Minimum Wages

In the **federal** jurisdiction, effective December 18, 1996, the *Act to amend the Canada Labour Code (minimum wage)* (i.e. Bill C-35) has aligned the minimum hourly wage payable to employees covered by Part III of the *Canada Labour Code* with the general minimum wage rates established from time to time by the provinces and the territories. The rate paid to any particular employee is that based on the employee's province or territory of employment. The Governor in Council retains the authority to establish a minimum wage rate that can apply to employees on a provincial or territorial basis and that differs from the rate set by a province or territory.

In **Saskatchewan,** *The Minimum Wage Board Order, 1996* established under the *Labour Standards Act,* has repealed and replaced *The Minimum Wage Board Order, 1992*. It provided an increase in the general minimum wage from $5.35 to $5.60 per hour, effective December 1, 1996. The minimum call-in pay, payable to employees who report for duty at the call of their employer, whether or not they remain on duty for three hours on that occasion, was increased from $16.05 to $16.80. The exclusions from this regulation have not been amended, nor has the provision stipulating that if the employer provides rest periods, the time is considered to be time worked.

In **Manitoba**, *The Construction Industry Wages Amendment Act*, passed on November 19, 1996, included, among other things, the following: new provisions defining "heavy construction sector", "house building sector" and "industrial, commercial and institutional sector"; the removal of persons employed in the house building sector from the application of the Act; the establishment of a Construction Industry Advisory Committee to represent the interests of the general public, consumers and other groups; and, additional factors considered by the wage boards when recommending wage levels. The provisions dealing with the establishment of the Construction Industry Advisory Committee took effect on November 19, 1996. The other provisions outlined above took effect on May 1, 1997. Some definitions have been deleted from the regulations (see Man. Reg. 72/97, Man. Reg. 73/97 and Man. Reg. 74/97) and included in the Act. The definition of "Greater Winnipeg" in the Act has been repealed. For greater flexibility, the Act now allows for a definition of "Winnipeg" to be included in the *Building Construction (Greater Winnipeg) Minimum Wage Regulation,* and in the *Building Construction (Rural) Minimum Wage Regulation.*

British Columbia has amended its *Employment Standards Regulation* established under the *Employment Standards Act*. These amendments provide a new definition of "live-in camp leader". A "live-in camp leader" is defined as a person employed by a charity at a summer or

seasonal camp for persons under 19 years of age, who provides instruction and counseling to campers, and who provides those services on a 24 hour per day live-in basis without being charged for room and board. The amendments also provide that the minimum daily wage for a live-in home support worker is $70.00 and $56.00 for a live-in camp leader, for each day or part of day worked. Also, these amendments specify that live-in camp leaders are excluded from the application of Part 4 of the *Employment Standards Act* which deals with hours of work and overtime. These amendments took effect on February 21, 1997.

In **Quebec**, effective October 1, 1997, the general minimum wage will increase from $6.70 to $6.80 per hour, and the hourly rate payable to employees who usually receive gratuities will increase from $5.95 to $6.05. Effective on the same date, the minimum wage payable to domestic workers who reside in their employer's home will increase from $260 to $264 per week, and their standard workweek will be 49 hours instead of 51.

In addition, Quebec has adopted a *Regulation respecting the minimum wage payable to employees of the woodworking and flat glass industries* under the *Act respecting labour standards*. This regulation stipulates that the minimum wage payable to any employee performing work which, if it has been carried out before August 1, 1997, would have come under the jurisdiction of the *Decree respecting the woodworking industry* or the *Decree respecting the flat glass industry* has been set at $8.90 per hour for the period starting on August 1, 1997 and ending on August 1, 1999.

D. Pay Equity

Quebec has adopted Bill 35, the *Pay Equity Act*. The purpose of this Act is to eliminate the salary gap due to the systemic gender discrimination suffered by persons occupying positions in predominantly female job classes.

The Act applies to every employer whose enterprise employs 10 or more employees in the public sector or in the private sector. An employer's obligation is, however, determined in relation to the size of the enterprise.

An employer whose enterprise employs 10 or more employees but fewer than 50 has to determine the adjustments in compensation required to offer the same remuneration, for work of equal value, to employees holding positions in predominantly female jobs classes as to employees holding positions in predominantly male job classes.

An employer whose enterprise employs 50 or more employees but fewer than 100 is required to establish a pay equity plan.

An employer whose enterprise employs 100 or more employees is required to establish a pay equity plan and, in order to enable his/her employees to participate in the establishment of a pay equity plan, the employer is required to set up a pay equity committee including employee representatives. A pay equity committee is composed of at least three members of which two thirds represent the employees (at least half of the members have to be women) and the other third represents the employer. The representatives of the employees as a group and the representatives of the employer as a group have one vote, respectively, within the pay equity committee.

A pay equity plan is established in four stages: the identification of predominantly female job classes and of predominantly male job classes in the enterprise; the description of the method and tools used to determine the value of job classes and the development of a value determination procedure, the determination of the value of job classes, comparison between them, the valuation of differences in compensation and the determination of the required adjustments in compensation; and of the terms and conditions of payment. When there are no predominantly male job classes in an enterprise, the pay equity plan will be established in accordance with the regulations of the Pay Equity Commission (Commission de l'équité salariale).

Upon completion of the first two stages of the plan, the employer is required to post the results in prominent places in such manners as they may be read by all the employees concerned, together with information concerning employee rights and the time within which they may be exercised. The employer is required to do the same after completion of the last two stages of the plan.

The time allowed for the completion of a pay equity plan or for the determination of compensation adjustments is four years. Adjustments in compensation can be spread over a maximum period of four years; in such a case, each adjustment has to be of equal value. An employer cannot, in order to achieve pay equity, reduce the compensation payable to any employee.

The Act provides for the establishment of the Pay Equity Commission (Commission de l'équité salariale) which is composed of three members, including a president, appointed by the Government after consultations with bodies representative of employers, employees and women. The Commission is be responsible, among other things, to oversee the establishment of pay equity plans, to see that pay equity is maintained, to give advice to the Minister on any matter related to pay equity, to investigate, to lend assistance to enterprises in the establishment of pay equity plans and to develop tools for enterprises, as well as to conduct research and studies on any matter related to pay equity.

Where the employer and the employees on a pay equity committee cannot agree or, upon receipt of a complaint, the Commission will investigate and endeavour to effect a settlement between the parties. If no settlement is possible, the Commission will determine the measures to be taken so that pay equity may be achieved as well as the time allotted for their implementation. If a party is dissatisfied, he/she can go to the Labour Court; for its part, if the Commission finds that the measures it determined are not implemented to its satisfaction, the Commission will refer the matter to the Labour Court. A decision of the Labour Court is final and without appeal.

Although the Act does not apply to enterprises with fewer than 10 employees, pay equity issues will be resolved by the Commission pursuant to the Charter of Rights and Freedom.

Provisions dealing with pay equity plans or pay relativity plans completed or in progress will, with some conditions, allow such plans to be recognized as being consistent with the Act; the employer will need to show, among other things, that the plan is exempt from gender-based wage discrimination.

Penal provisions are provided for cases where the Act has been contravened.

The provisions of Chapter 5 of the Act, dealing with the establishment of the Pay Equity Commission (Commission sur l'équité salariale) and its duties and powers, took effect on November 21, 1996. Other provisions of this Act will come into force on November 21, 1997 or on an earlier date set by the government.

In **Ontario**, Bill 136, the *Public Sector Transition Stability Act, 1997,* was introduced in the Ontario Legislature on June 3, 1997. If approved by the legislature, that Bill will enact the *Public Sector Dispute Resolution Act, 1997* and the *Public Sector Labour Relations Transition Act, 1997*, and will, among others, amend the *Pay Equity Act,* as outlined below.

Proposed amendments specify that individuals who provide private-home day care are not employees for the purposes of the *Pay Equity Act*. That change will be made retroactive to January 1, 1988.

The sale of business provisions will be amended so that a purchaser who replaces the seller's pay equity plan is not bound by adjustments set out in the seller's plan that are higher than those set out in the replacement plan.

The legislation will also change requirements for retroactive pay equity adjustments in the broader public sector. In these cases, pay equity adjustments will have to be made back to the time a complaint was filed in respect of the failure to post a pay equity plan, a bargaining agent, if any, first attempted to negotiate a pay equity plan, or a pay equity plan was posted by the employer. Under the current Act, obligations may go back to January 1, 1990. The effective date of this change will be June 3, 1997.

E. Employment Equity

At the **federal** level, the new *Employment Equity Regulations* under the *Employment Equity Act* came into force on October 23, 1996. They cover the following areas:

- collection of workforce information and workforce analysis
- employment systems review
- maintenance of employment equity records
- calculation of the number of employees
- private sector employers reporting requirements, and
- definitions.

A few technical amendments have been included to modernize the previous regulations. The occupational classification has been updated to allow employers to use Census of Canada information, which, starting in 1996, is based on the new National Occupational Classification. The salary ranges has also been updated to reflect the shift in salary distributions over the last ten years.

Also, October 24, 1996 was set as the date of the coming into force of the new *Employment Equity Act* described in the *Highlights of Major Developments in Labour Legislation (1995-1996)*. The Minister of Labour was designated as the Minister responsible for that Act.

F. Retail Establishments

Manitoba has amended the *Remembrance Day Act* (i.e. Bill 50) to provide, among other things, that an employee in a retail business establishment has the right to refuse to work on Remembrance Day if he/she gives notice to the employer at least 14 days in advance, in which case there is a prohibition against discharge for such refusal to work. Also, some provisions of the *Employment Standards Act,* with consequential modifications, dealing with payment of employees on general holidays apply to an employee who works on Remembrance Day. These amendments took effect on November 19, 1996.

On December 19, 1996, **Ontario** adopted Bill 95, the *Boxing Day Shopping Act, 1996.* The purpose of this Act is to permit shopping on Boxing Day. The Act has amended the *Retail Business Holidays Act* by deleting December 26 from the definition of holiday. It has also amended the *Employment Standards Act* so that workers retain the right to refuse to work on December 26.

In **New-Brunswick,** *An Act to Amend the Days of Rest Act* and *An Act to Amend the Employment Standards Act* (i.e. Bills 61 and 62) were promulgated. The amendments made to the *Days of Rest Act* ensure that even if a lease requires that a retail business establishment remain open on a weekly day of rest (e.g., Sunday and public holidays), it has no effect regarding the weekly day of rest. A companion amendment to the *Employment Standards Act* provides that, where a retail business establishment is exempted from the application of the *Days of Rest Act*, and opens on Sundays, the employees have the right to refuse to work on a Sunday upon at least 14 days notice to his/her employer. It also stipulates that an employer cannot dismiss, suspend, lay off or penalize an employee because he/she has, in accordance with the Act, refused or attempted to refuse to work on a Sunday. The amendment to both Acts took effect on May 15, 1997.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Manitoba**, significant amendments (i.e. Bill 26) were made to the *Labour Relations Act* effective February 1, 1997. The main ones deal with the following topics.

Certification

Upon an application for certification by a trade union, a representation vote is required when the Manitoba Labour Board is satisfied that, as of the date of the filing of the application, at least 40% of the employees in the proposed bargaining unit wished to have the union represent them as their bargaining agent; if the percentage is below 40%, the Board dismisses the application.

The representation vote must be held within seven days (excluding days on which the offices of the Board are closed) after the application for certification is filed. However, the Board may extend the time for taking a vote in exceptional circumstances.

Ratification of a proposed collective agreement

All employees in the bargaining unit, not union members only as previously provided in the Act, are entitled to participate in the mandatory vote on the acceptance or rejection of a proposed collective agreement. However, this right does not extend to replacement workers due to the temporary nature of their employment.

Votes on last offer

Before the commencement of a strike or lockout, the employer may make one request for a vote of the employees in the affected unit on his/her last offer on all matters remaining in dispute. The Minister of Labour may, on any terms and conditions he/she considers necessary, order that such a vote be held immediately.

At any time during a strike or lockout, where he/she is of the opinion that it is in the public interest, the Minister of Labour may order a vote of the employees in the affected bargaining unit on the employer's last offer on all matters remaining in dispute.

A vote on the employer's last offer ordered by the Minister is conducted by the Board, and the result is binding if the offer is accepted by a majority of employees participating in the vote.

Reinstatement after strike or lockout

Subsection 12(2), which essentially prohibited an employer from refusing to reinstate an employee after a strike or lockout for any conduct that was related to the strike or lockout, including any act in support of the strike or in opposition to the lockout, has been repealed. It has been replaced by a provision allowing an employer to refuse to reinstate an employee following a strike or lockout provided that the employer satisfies the Board that the refusal to reinstate the employee is for just cause.

Strike-related misconduct

The application of the provision of the Act prohibiting strike-related misconduct has been expanded to specifically include unions and employees.

Use of union dues for political purposes

Every union must develop and implement a process for consulting each employee in a unit governed by a collective agreement between the union and an employer about whether they wish their union dues to be used for political purposes.

An employee who objects to the use of his/her union dues for political purposes may so advise the union in writing and direct that any amount of such dues proposed to be used for political purposes be remitted by the union to a registered charity designated by him/her. The union must remit the dues to the registered charity on an annual basis.

It is an unfair labour practice for a union to fail to comply with these provisions.

Costs of mediator

One third of the remuneration and expenses of a mediator appointed under the Act to mediate a collective bargaining impasse must be paid out of the Consolidated Fund and two thirds must be paid in equal shares by the parties. Previously, the government paid all the costs associated with the remuneration and expenses of a mediator appointed under the Act for such purpose.

Expedited grievance mediation/arbitration procedures

A bargaining agent may refer a grievance under a collective agreement to the Board for settlement only in the case of an employee's dismissal or suspension for a period exceeding 30 days or concerning any other matter that the Board considers to be of an exceptional nature.

Such a grievance may be referred to the Board only if the grievance procedure under the collective agreement has been exhausted or 14 days have elapsed since the grievance was first brought to the attention of the other party.

Disclosure of information by unions

For each fiscal year ending on or after June 30, 1996, a union must file with the Board, not later than six months after the end of its fiscal year, its audited financial statement and a compensation statement for that fiscal year. The compensation statement, certified to be correct by its auditor, must state the amount of compensation the union provides in the fiscal year, directly or indirectly, to, or for the benefit of, each of its officers and employees whose compensation is $50,000 or more (i.e. the name of the individual, his/her position(s) and total compensation). The term "compensation" includes the total value of all cash and non-cash salary, payments, allowances, bonuses, commissions and perquisites.

The financial statement of a union must set out the union's income and expenditures for the fiscal year in sufficient detail to disclose accurately the financial condition and operation of the union and the nature of its income and expenditures. A union is not required to disclose the

amount of its strike fund, but must indicate the expenditures made out of its strike fund during a fiscal year.

The first compensation statement filed by a union must contain, in addition to what is mentioned above, comparative information about the compensation of each affected person for the preceding fiscal year.

The Board must permit an employee in a unit for which a union is the bargaining agent to inspect its financial statement and compensation statement during normal office hours. An employee whose union is a member of an organization or federation of unions must also be permitted to inspect the financial statement and compensation statement of that organization or federation.

On payment to the Board of any reasonable administrative fee it may require, such an employee is entitled to receive a copy of the financial statement and compensation statement of the union, and may file a request for further information. Nothing in the legislation prevents an employee from requesting such statements or further information from the union concerned.

Where an employee files with the Board a request for further information, the latter may, if it is satisfied that the financial statement or the compensation statement filed by the union does not meet the requirements prescribed by the legislation, order the union to prepare a revised financial statement or compensation statement in any form and containing any information that the Board considers appropriate. It may also require that the revised financial statement or compensation statement be certified by an auditor.

If a union fails to file with the Board a financial statement or compensation statement or revised financial statement or compensation statement within the prescribed time, an employee concerned may ask the Board to issue an order confirming the non-filing. If the union fails to file such a statement or statements within 30 days after being served with such an order, the Board must order the employer of the employee who sought the order to stop deducting union dues from the wages of employees in the unit affected and remitting them to the union. The Board may limit such an order so that it does not apply to any portion of union dues used to maintain the professional status of employees or in respect of pension, superannuation, sickness, insurance or other benefits. If at any time the union files the necessary statement(s), the Board must order the employer concerned to resume the check-off of union dues.

Other sanctions, including fines, apply in the case of an organized group or federation of unions that does not file a financial statement or compensation statement or revised financial statement or compensation statement as required by the legislation.

The first disclosure of financial or compensation information by unions could be made at any time before February 15, 1997.

Teachers

Persons and organizations covered by Part VIII (Collective Bargaining) of the *Public Schools Act* remain excluded from the application of the *Labour Relations Act,* except for the provisions relating to the consultation of employees on the use of union dues for political purposes and the disclosure of compensation or financial information by unions.

In **New Brunswick**, amendments to the *Industrial Relations Act* (i.e. Bill 32) have been passed to provide for an expedited grievance arbitration process.

A party to a collective agreement may, in writing, request that the Minister of Labour refer to an arbitrator a difference between the parties or persons bound by the agreement concerning its interpretation, administration, or an alleged violation of its provisions. However, such a request may be made only if the grievance procedure under the collective agreement has been exhausted or 30 days have elapsed since the grievance was first brought to the attention of the other party, whichever occurs first. Also, a request for expedited arbitration may not be made if the difference has been referred to arbitration under the collective agreement by the party who wishes to make the request or the time, if any, stipulated in the collective agreement for referring the difference to arbitration has expired.

When a request for expedited grievance arbitration is received by the Minister, he/she appoints an arbitrator. The arbitrator must commence a hearing into the matter within 28 days after the day on which the difference was referred to the Minister. The Minister may also, if one party so requests and the other one agrees, appoint a grievance mediator. If a grievance mediator is not appointed or if the parties are unable to settle the difference with the assistance of a grievance mediator, the arbitrator must hear and determine the matter and submit a decision within 21 days of the conclusion of the hearing. At the request of the parties to the difference, the arbitrator must, if possible, issue an oral decision within one day after the conclusion of the hearing and written reasons within 21 days.

When the Minister appoints an arbitrator under these new provisions, the parties to the difference must each pay one-half of his/her remuneration and expenses.

These amendments to the *Industrial Relations Act* will come into force by way of proclamation.

In **Saskatchewan**, the current *Trade Union Act* contains a provision stipulating that where the term of a collective bargaining agreement exceeds three years, its expiry date for the purpose of giving notice to the other party to negotiate a revision of that agreement is considered to be three years after its effective date. The *IPSCO Inc. and United Steelworkers of America, Local 5890, Collective Bargaining Agreement Act*, which came into force on April 8, 1997, has exempted from that provision a five-year collective bargaining agreement concluded between IPSCO Inc. and the United Steelworkers of America, Local 5890.

Bill 37, *An Act to amend the Trade Union Act* has been introduced to give the Lieutenant Governor in Council the power to exempt a collective bargaining agreement and the parties concerned from the provision of the *Trade Union Act* described in the previous paragraph. Such an exemption could be granted only if the parties make a joint request to the Minister of Labour, and this is not the first collective bargaining agreement negotiated between them.

For the purpose of the provision pertaining to the giving of notice to negotiate under the Act, where an exemption, as mentioned above, is granted, the expiry date of the collective bargaining agreement in question would be the one set out in the agreement.

In **Quebec**, *An Act to amend the Act respecting collective agreement decrees* (Bill 75) was assented to on December 23, 1996.

This Act aims at harmonizing the *Act respecting collective agreement decrees* with certain provisions of the *Labour Code* and the *Act respecting labour standards*, in particular as regards definitions and the measures established for the protection of employees.

In addition, the Act states that the juridical extension of a collective agreement under the *Act respecting collective agreement decrees* applies, at the discretion of government, to professional employers (i.e. those who have in their employ one or more employees to whom a decree applies). Certain amendments specify the process and criteria for the evaluation of applications relating to the juridical extension or amendment of collective agreement decrees, and provide for accelerated processing of the applications.

After the Minister has published in Quebec's official gazette a notice of receipt of an application for the juridical extension of a collective agreement with the text of the related draft decree, and that the time specified in the notice for filing objections has expired, he/she may recommend that the government issue a decree ordering the extension of the agreement, with such changes as are deemed expedient, if he/she considers that the field of activity applied for is proper and that the provisions of the agreement are as follows:

- they have acquired a preponderant significance and importance for the establishment of conditions of employment;
- they may be extended without any serious inconvenience for enterprises competing with businesses established outside Quebec;
- they do not significantly impair the preservation and development of employment in the defined field of activity;
- they do not result, where they provide for a classification of operations or for various classes of employees, in unduly burdening the management of the enterprise concerned.

In establishing whether a field of activity is proper, the Minister must have regard to the nature of the work, the products and services and the characteristics of the market applied for as well as the field of activity defined as the scope of other decrees. In all cases, the Minister must continue to give proper consideration, where applicable, to the particular conditions prevailing in the various regions of Quebec.

A decree may include any provision determining the participation of the parity committee in the development of industrial strategies in the field of activity defined as the scope of the decree or relating to the participation of the committee in the development of manpower training in that same field of activity.

A decree may not impose, among others, a provision of the agreement concerned pertaining to the activities, administration or funding of an association of employees or an employers' association; a wage increase applicable to an effective wage rate that is higher than the wage rate established in the decree; or the application of a wage rate that is higher than the wage rate provided in the decree.

Where there is an overlapping of fields of activity defined in two or more decrees or there is double coverage, the Act provides that if the parity committees and the professional employer concerned cannot reach an agreement concerning this, one of them may refer the issue to an arbitrator. An agreement or arbitration award binds the parties concerned until the date of expiry of the applicable decree, unless the employees concerned are, in the intervening time, excluded from its scope.

The Act modifies the role and powers of parity committees and empowers the Minister to monitor the quality of their management. In certain circumstances, for example when necessary or appropriate corrective action has not been taken by a parity committee or a serious fault, such as embezzlement or breach of trust, has been committed by one or more of its members or officers, the Minister may, after being made aware of facts revealed upon ascertaining compliance with the Act and after giving the members of the committee an opportunity to present observations in writing concerning such facts, suspend for a period not exceeding 120 days the powers of the committee members and appoint provisional administrators to exercise their powers during the period of suspension. The Minister may make such a decision even before the conclusion of a verification or inquiry, and, after examining the report of the provisional administrators, he/she may exercise various powers, including the extension of the provisional administration or the removal from office and replacement of one or more members of the committee, to remedy such situations or prevent their re-occurrence.

A decree in force on December 23, 1996 expires on the date determined therein, if any, or on June 23, 1998 whichever occurs last. However, the government may extend the term of such a decree for a period not exceeding 18 months. The provisions mentioned previously concerning overlapping of fields of activity defined in two or more decrees or double coverage do not apply to a decree in force on December 23, 1996, whether that decree is extended or not.

In addition, the Minister of Labour must, by December 23, 1999, report to the government, on the application of the *Act respecting collective agreement decrees*. The report, as regards the manufacturing sector, must be made in collaboration with the Minister responsible for Industry and Trade, and must express an opinion as to the advisability of maintaining that sector within the scope of the Act.

Most of the provisions of the Act came into force on December 23, 1996, including those that are mentioned above.

B. Public and Parapublic Sectors

In **Manitoba**, the *Government Essential Services Act* (Bill 17) was assented to and came into force on November 19, 1996. That Act was later amended by Bill 15, effective June 27, 1997, and its title was changed to the *Essential Services Act*.

The *Essential Services Act* applies to the government of Manitoba and to other employers such as the owner or operator of a hospital or personal care home, a child and family services agency and a regional health authority as well as to their employees covered by a collective agreement and the unions representing them.

Essential services are defined as services that are necessary to enable the employer to prevent danger to life, health or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts or of legislative drafting.

If an employer and a union do not have an essential services agreement under the Act, they must, at least 90 days before the expiry of the collective agreement between them, begin negotiations with a view to concluding an essential services agreement.

An employer, other than the government of Manitoba, must at the beginning of the negotiations advise the union about which services are to be essential services for the purposes of the essential services agreement. In the case of the government of Manitoba, the essential services for the purposes of an essential services agreement are the services listed in a schedule of the Act or declared by regulation.

If, during the 30 days before a collective agreement expires, the parties have not concluded an essential services agreement, the information that the employer would be required to provide in a notice under the Act when no such agreement is in effect (see next paragraph) may be divulged on the employer's own initiative or be obtained upon request by the union for the purpose of facilitating the negotiation of an essential services agreement.

If no essential services agreement is in effect under the Act and a work stoppage has occurred or is impending, the employer must serve a notice on the union setting out the classification, number and names of employees required to work during the work stoppage to maintain essential services as well as, in the case of an employer other than the government of Manitoba, the essential services that must be maintained. The employer may serve a further notice on the union if more employees are required to maintain essential services. As a result of such a notice or notices, the employees concerned are required to work during the work stoppage.

If the union believes that the essential services can be maintained using fewer employees than those mentioned in the employer's notice or notices, it may apply to the Manitoba Labour Board for a variation of the number of employees in each classification who must work during a work stoppage. The Board has the power to confirm or vary the number of essential services employees, and the parties are bound by an order it has made. However, on application by the employer or the union, the Board may vary, revoke or replace such an order.

Notice to terminate an essential services agreement may be given if a collective agreement is in effect and such notice is served by the employer or union on the other party at least 100 days prior to the expiry of the collective agreement. This does not affect the obligation of the parties to negotiate with a view to concluding a new essential services agreement.

An employee who contravenes the legislation is liable to a fine not exceeding $1000, while the employer, a union or a representative of either of them is liable to a maximum fine of $50,000. Further fines of $200 and $10,000 respectively are applicable for each day or part of a day during which the offence continues.

Also in Manitoba, the *Public Schools Amendment Act (2)* (Bill72) has modified the part of the *Public Schools Act* that deals with the collective bargaining process applying to public school teachers.

Selection of procedure to reach an agreement

After notice to bargain has been given, the parties may make a joint written request to the Minister responsible for the administration of the Act to appoint either a conciliation officer or a mediator-arbitrator.

If no such joint request has been made and at least 60 days have elapsed since the giving of notice to begin collective bargaining, either party may request the Minister to appoint a mediator-arbitrator.

Unless there has been a request for the appointment of a conciliation officer, the Minister must appoint a mediator-arbitrator if requested to do so.

Conciliation and Arbitration

The Minister must appoint a conciliation officer if requested to do so jointly by the parties and if there has been no request for the appointment of a mediator-arbitrator.

The remuneration and expenses of the conciliation officer must be shared equally by the parties.

If a conciliation officer cannot bring about an agreement between the parties, the Minister appoints an arbitrator at the request of either party or on his/her own initiative.

Non-arbitrable matters and arbitration criteria

The following matters cannot be referred for arbitration and must not be considered by an arbitrator or included in an arbitration award:

-the selection, appointment, assignment and transfer of teachers and principals;
-the method for evaluating the performance of teachers and principals;
-the size of classes in schools;
-the scheduling of recesses and the mid-day break.

However, subject to the *Public Schools Act* and any other Act, collective bargaining may be carried out in respect of the matters just mentioned.

Also, effective January 1, 1997, there is an obligation that a school board act reasonably, fairly and in good faith in administering its policies and practices related to matters not referable for arbitration. Any failure by a school board to comply with this obligation may be the subject of a grievance under the collective agreement.

With respect to matters that might reasonably be expected to have a financial effect on a school division or district, an arbitrator is required to take into account the following factors:

-the school division's or district's ability to pay, as determined by its current revenues, including funding received from the government of Manitoba or Canada and its taxation revenue;

-the nature and type of services that the school division or district may have to reduce in light of the decision or award, if its current revenues are not increased;

-the current economic situation in Manitoba and in the school division or district;

-a comparison between the terms and conditions of employment of the teachers in the school division or district and those of comparable employees in the public and private sectors, with

primary consideration given to comparable employees in the school division or district or in the region of the province in which it is located;

-the need of the school division or district to recruit and retain qualified teachers.

An arbitrator's award is binding on the parties.

Mediation-Arbitration

Where a mediator-arbitrator has been appointed as mentioned above under the heading "Selection of procedure to reach an agreement", and the parties fail to conclude or revise a collective agreement within 60 days after the appointment, either party may require the mediator-arbitrator to settle a collective agreement by arbitration, or the mediator-arbitrator may decide to proceed if he/she believes an impasse has been reached in the mediation process.

The provisions described above under the heading "Non-arbitrable matters and arbitration criteria" apply to a mediator-arbitrator settling a collective agreement by arbitration.

Right to strike or to lock out

Teachers continue to be prohibited from striking and school boards are not permitted to declare a lockout of teachers.

Remuneration of arbitrator or mediator-arbitrator

The remuneration and expenses of an arbitrator or a mediator-arbitrator appointed under the Act must be shared equally by the parties to a dispute.

Coming into force

This Act applies to every collective agreement (whether new, renewed or revised) whose term of operation begins on or after January 1, 1997, and for this purpose the provisions described above, except as otherwise indicated, are deemed to have come into force on October 1, 1996.

In **Saskatchewan**, *The Health Labour Relations Reorganization (Commissioner) Regulations* under *The Health Labour Relations Reorganization Act* came into force on January 17, 1997. Among other things, they prescribe appropriate collective bargaining units for nurses, health support practitioners and health services providers.

Trade unions listed in a table contained in an appendix to the regulations are determined as the trade unions that represent health sector employees for the purposes of bargaining collectively with respect to appropriate units of nurses and health services providers.

As soon as possible after the coming into force of the regulations, the Labour Relations Board must conduct representation votes, in accordance with *The Trade Union Act*, for any appropriate unit that does not have a trade union determined by the regulations as outlined above.

The Saskatchewan Health Care Association, commonly known as the Saskatchewan Association of Health Organizations, is designated as the representative employers' organization for all

district health boards, all health sector employers listed in tables contained in an appendix to the regulations and all other employers whose employees are added to a multi-employer appropriate unit. Every such employer is a member of the representative employers' organization for the purposes of bargaining collectively.

In **New Brunswick**, *An Act to Amend the Public Service Labour Relations Act* (Bill 60) took effect on December 19, 1996. This Act contains some amendments of a housekeeping nature and provides that where collective bargaining has not commenced and the parties have agreed that the bargaining agent may bargain collectively on behalf of more than one bargaining unit with a view to the conclusion, renewal or revision of a single collective agreement applicable to all those bargaining units, the bargaining agent may, within prescribed time limits, apply in writing to the Labour and Employment Board, with notice to the employer, for an order that the bargaining units be considered to be one bargaining unit for the purposes of certain sections of the Act dealing with strike votes, the declaration that there is a deadlock in the negotiations, conditions that must be met before strike action can be taken, the right to lock out and the employer's option to request a vote on its most recent offer. Such an application could also be made within 20 days after December 19, 1996, where notice to bargain was given before that date.

The Board will make the order applied for if it is satisfied that the bargaining agent is currently certified for each of the bargaining units and the parties have agreed that a single collective agreement will apply to all those units.

In **Ontario**, the *Fire Protection and Prevention Act, 1997* (Bill 84) was assented to on May 27, 1997, and will come into force by proclamation. It will repeal a number of Acts relating to fire services, including the *Fire Departments Act,* and consolidate them into one statute.

Among other things, the Act sets out certain statutory working conditions for firefighters on such topics as hours of work and hours off duty, and it provides that:

- the fire chief may recall the necessary off-duty firefighters in order to provide an adequate response during major emergencies;

- the employment of a firefighter may be terminated upon seven days' notice, with written reasons for the termination;

-a firefighter who has received a notice of termination of employment is entitled to an independent review of the termination, unless a collective agreement provides for another review mechanism;

- the employment of a firefighter may be terminated without cause and without a review at any time during the first 12 months, unless a collective agreement provides otherwise.

With respect to the labour relations framework for firefighters, the Act contains the following measures:

- it specifies that firefighters are not permitted to strike and that their employers may not lock them out;

- it stipulates that firefighters employed in a fire department (except those performing

managerial functions or acting in a confidential capacity in matters relating to labour relations) constitute a bargaining unit, and that the majority of firefighters in a unit may request an association of firefighters to represent them and act as their bargaining agent for collective bargaining purposes;

- it requires that disputes relating to the bargaining of a collective agreement be referred to a conciliation officer before one of the parties may request the arbitration of unsettled matters (arbitration criteria, such as the employer's ability to pay in light of its fiscal situation, will continue to apply); and

- it provides that employers are authorized to designate firefighters (a maximum number is specified according to the size of the fire department) who for the purposes of the Act are conclusively deemed to be performing managerial functions or acting in a confidential capacity in matters relating to labour relations. However, an employer may only designate a firefighter if he/she consents to the designation.

In the **Yukon Territory**, the *Public Sector Compensation Restraint Act, 1994* was repealed on December 18, 1996. The repealing legislation indicated the dates on which the period of restraint ended for several categories of employees as well as the dates of expiry of collective agreements.

In **Quebec**, *An Act respecting the reduction of labour costs in the public sector and implementing the agreements reached for that purpose* (Bill 104) has implemented agreements reached with several public sector employee's associations to reduce labour costs having regard to the conditions of employment agreed on between the parties.

With that objective in view, it temporarily has broadened eligibility for retirement and has modified the conditions of employment of various groups of persons in whose respect labour costs could not be reduced in any other way.

In addition, the Act has set out ways of implementing labour costs reduction measures (e.g. a reduction of 6% effective July 1,1997) for public sector employers and associations of employees that have not concluded an agreement on that subject (e.g. educational institutions at the university level, subsidized private educational institutions, the Quebec Liquor Board and the Quebec Lottery Board).

Most provisions of the Act came into force on March 22, 1997. The other provisions were scheduled to come into effect on July 1, 1997, unless appropriate alternative measures applying to all persons concerned were determined by agreement with the government before that date.

In **Ontario**, Bill 136, the *Public Sector Transition Stability Act, 1997,* was introduced in the Ontario Legislature on June 3, 1997.

If approved by the legislature, that Bill will enact the *Public Sector Dispute Resolution Act, 1997* and the *Public Sector Labour Relations Transition Act, 1997.* It will also amend the *Employment Standards Act* and the *Pay Equity Act* (for these amendments, see Section I: Employment Standards).

Public Sector Dispute Resolution Act, 1997

The *Public Sector Dispute Resolution Act, 1997* will bring changes to the system for resolving disputes in the fire services, police and hospital sectors, where strikes and lockouts are not permitted.

One of the stated purposes of the Act will be to encourage the settlement of disputes through negotiation.

A Dispute Resolution Commission (DRC) will be established. The DRC will be composed of persons appointed by the Lieutenant Governor in Council, and will include temporary commissioners who will be part of the Commission only for the purposes of the disputes for which they are appointed. A chief and a deputy chief commissioner may be designated.

After conciliation, the employer or bargaining agent may refer a dispute to the DRC. If it is not settled following meetings, if any, ordered by the chief commissioner, he/she will have a number of powers, such as the power to choose the person or panel who will resolve the dispute and the most appropriate method to do so, including mediation-arbitration or mediation-final offer selection. The dispute must be resolved within 60 days after the chief commissioner chooses the method of resolution (whether or not that method has been changed with his/her consent). However, the chief commissioner may extend that deadline.

Either party may refer a dispute to the DRC for resolution, as mentioned above, or, after conciliation, the parties to collective bargaining may agree to refer the dispute to a private arbitrator or arbitration board. Factors that the DRC or arbitrator (or arbitration board) must consider in settling the dispute will be set out in each of the Acts covering the fire services, police and hospital sectors. They are similar to current interest arbitration criteria, and include the employer's ability to pay in light of its fiscal situation.

Public Sector Labour Relations Transition Act, 1997

The *Public Sector Labour Relations Transition Act, 1997* will provide for the resolution of labour relations issues that will arise as municipalities, school boards and hospitals restructure. With respect to school boards, the Act will apply to non-teaching staff and occasional teachers.

One of the purposes of the Act will be to facilitate collective bargaining between employers and trade unions following restructuring and in other specified circumstances. However, if they are unable to develop solutions to their labour relations issues through collective bargaining, the Act will provide a process to resolve outstanding issues.

The Act will establish the Labour Relations Transition Commission (LRTC), a body created for a four-year period (i.e. until December 31, 2001 or a later date that may be prescribed). The LRTC will be composed of persons appointed by the Lieutenant Governor in Council and will have special powers to deal with labour relations issues in an expedited manner while taking into consideration the circumstances surrounding each particular restructuring. These issues may include, for example, the composition of new bargaining units, which union will represent the employees in a unit, and the negotiation of a new collective agreement following the restructuring. The determination of which union will represent the employees would be based on a vote, except where a single union already has a large majority of members in the new bargaining unit. If 40% or more of the employees in the bargaining unit were not represented

by a bargaining agent, the ballot will enable the employees to vote in favour of having no bargaining agent.

Similarly, where employees from separate bargaining units are intermingled and the parties cannot agree on the resolution of seniority issues, the LRTC will dovetail the seniority lists, unless there are compelling reasons to do otherwise. For seniority purposes, equal recognition will be given to the service of union and non-union workers in all cases.

Following the determination of bargaining units and bargaining agents by agreement of the parties involved or an order of the LRTC, the collective agreement applying to a member of the bargaining unit before the agreement or order will continue to apply to him/her. If several collective agreements apply in the bargaining unit as a result of intermingling, the provisions of each collective agreement will be deemed to form one part of a single collective agreement, called a composite agreement. The parties may choose to replace the composite agreement with one of the collective agreements that existed prior to the restructuring or may jointly ask the LRTC to choose one of the agreements included in the composite agreement. Alternatively, either party may give notice to bargain a new collective agreement at any time after the determination of bargaining units and bargaining agents. After notice to bargain is given, the collective agreement will be deemed to cease to operate 90 days after that notice. If neither party gives early notice to bargain, a collective agreement or a composite agreement will cease to operate one year after the agreement of the parties or the order of the LRTC concerning the bargaining unit comes into effect, or on such other date as the parties may agree upon.

As mentioned previously, the resolution of disputes in the fire services, police and hospital sectors, where strikes and lockouts are not permitted, will be governed by the *Public Sector Dispute Resolution Act, 1997.* In the case of the municipal sector (expect fire services and police) as well as non-teaching staff and occasional teachers in school boards, within 30 days after notice to bargain has been given or such longer period as the parties may agree upon, either party will be able to notify the other party that, if they do not conclude a new collective agreement, the party intends to refer the matters in dispute to the Dispute Resolution Commission. A dispute could be referred to the Commission after the conciliation process. It would then have the power to resolve a first collective agreement following an amalgamation or merger, and the parties would not have the right to strike or to lock out for this first round of bargaining. When resolving the dispute, the Commission would have to take into consideration the same factors applying to other sectors covered by the *Public Sector Dispute Resolution Act, 1997.*

C. Emergency Legislation

In **Ontario**, Bill 113, the *Lennox and Addington County Board of Education and Teachers Dispute Settlement Act, 1997* was passed to settle a dispute between the Lennox and Addington County Board of Education and its secondary school teachers who had been on strike since December 9, 1996.

The striking teachers were required to resume their duties on January 31, 1997 (exceptions were provided for those not returning to work for health reasons or by mutual consent of the teachers and the board of education). The board, for its part, was to resume the employment of the teachers and normal operation of the schools.

The collective agreement between the parties that expired on August 31, 1996 was considered to continue in force until replaced by a new agreement of a duration of two years reached by the parties or resulting from the decision of an arbitrator appointed under the Act.

If the parties could not conclude a collective agreement by February 7, 1997, they were considered to have referred all matters in dispute to an arbitrator under the *School Boards and Teachers Collective Negotiations Act*. They could, however, withdraw from the arbitration if, before a decision was rendered, there was a negotiated settlement and the new collective agreement was ratified.

The Act provided that each party had to assume its own costs of the arbitration proceedings and had to pay one-half of the fees and expenses of the arbitrator.

Fines were provided for a contravention of the Act by an individual or party (maximum: $1,000) and by the board of education, an organization of teachers or a union federation representing them (maximum: $25,000). These fines were applicable to each day on which the contravention occurred or continued.

The Act came into force on January 30, 1997 and will be repealed on September 1, 1998 or on an earlier date announced by proclamation.

D. Construction Industry

In **Quebec**, *An Act to amend various legislative provisions relating to the construction industry* (Bill 78) was assented to on December 23, 1996.

This Act has amended various laws governing the construction industry mainly to remove some of the constraints affecting individuals and enterprises in that industry.

In particular, the Act has brought a number of changes to the *Act respecting labour relations, vocational training and manpower management in the construction industry*.

It provides, among others, that the Quebec Construction Commission may, at any time, issue a card under section 36 of the Act (i.e. the card that individuals covered by the Act must hold if they wish to work as employees in the construction industry) to a person who wishes to begin working in that industry. That person must make known to the Commission, according to the procedure it establishes, his/her election respecting one of the associations of employees in the industry. In such a case, the document issued to the person by the Commission indicating his/her election has effect from the date of issue, and the Commission must inform the representative association concerned accordingly.

The Act also provides that, in order to give effect to an intergovernmental agreement in respect of manpower mobility or the mutual recognition of qualifications, skills or work experience in trades and occupations in the construction industry, the government has the power to make regulations exempting certain persons, on the conditions it determines, from the requirement of holding a competency certificate or an exemption issued by the commission. Such regulations may, in particular, provide for adjustments to the provisions of the Act and the regulations as well as special management rules.

The changes mentioned above came into force on December 23, 1996

A *Regulation respecting certain exemptions from the requirement of holding a competency certificate or an exemption issued by the Commission de la construction du Québec* under the *Act respecting labour relations, vocational training and manpower management in the construction industry* came into force on January 15, 1997.

This regulation provides that a person domiciled in Ontario is, on the following conditions, exempted from the requirement of holding a competency certificate or an exemption issued by the Quebec Construction Commission:

-the persons holds a valid, recognized attestation authorizing him/her to carry on, in Ontario, a trade which, under or pursuant to the Ontario-Quebec Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry dated December 6, 1996, is paired with one of the trades listed in the regulations, or with a specialty under one of those trades, or which, under or pursuant to that agreement, is recognized as being equivalent to an occupation existing in Quebec;

-in accordance with the provisions of the agreement, the person meets the applicable requirements in respect of occupational health and safety training.

The exemption mentioned above applies only on the condition that the person in question also holds a card issued by the Commission under section 36 of the Act (i.e. the card that individuals covered by the Act must hold when they work as employees in the construction industry). Such a card is issued, on request, to a person domiciled in Ontario only where that person meets the conditions mentioned above or where he/she holds a competency certificate or an exemption issued by the Commission.

With respect to the criteria for job priority, a person who is exempted, as mentioned above, is considered to be domiciled in the region in which the work relating to the employment offered is being carried out. Where the person is hired to carry out such work, he/she is considered to be domiciled in that region for the duration of the employment.

Also in Quebec, the *Decree respecting the flat glass industry* and the *Decree respecting the woodworking industry* adopted under the *Act respecting collective agreement decrees* were abolished effective August 1, 1997.

Effective July 9, 1997, *An Act respecting certain flat glass setting or installation work* (Bill 147) provides that, for a period of six months beginning on August 1, 1997, the wage rates determined in a collective agreement entered into under the *Act respecting labour relations, vocational training and manpower management in the construction industry* do not apply to employees carrying out flat glass setting or installation work if the work is subject to that Act by reason of the repeal of the Decree respecting the flat glass industry and the work is carried out under a contract entered into before August 1, 1997, a copy of which, dated and signed, is received at the Quebec Construction Commission (Commission de la construction du Québec) within the prescribed time limits.

During the period and in respect of this work, the wage rate applicable to an employee will be the wage rate to which the employee would have been entitled had the decree not been repealed.

In **Newfoundland,** the *Labour Relations Act* was amended, effective May 20, 1997, to give the Lieutenant-Governor in Council the power to declare an undertaking for the construction or fabrication of works at the Bull Arm site that is planned to require three years or less to be a "special project" for the purposes of the Act. Prior to the amendment, the Act limited the declaration of special projects to undertakings involving construction that were planned to require a period exceeding three years.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

In **Ontario**, a *Joint Health and Safety Committees - Exemption from Requirements - Regulation* under the *Occupational Health and Safety Act* became effective September 1, 1996, and replaced another regulation on the same subject.

This regulation provides that a workplace at which fewer than 20 ordinary workers (i.e. those who are not participating in community participation activities under a workfare program) are regularly employed is exempted from the requirement to establish a joint health and safety committee. A similar exemption applies to a workplace covered by a regulation concerning designated substances when that workplace is a construction project at which fewer than 20 ordinary workers are regularly employed. In addition, a workplace at which fewer than 20 ordinary workers (who are not volunteers) are regularly employed is exempted from the requirement of the Act regarding the certification of at least one member of the joint health and safety committee representing the employer or constructor and of at least one member representing workers. The same applies to a construction project at which fewer than 50 ordinary workers (who are not volunteers) are regularly employed.

In **Saskatchewan**, the *Occupational Health and Safety Regulations, 1996* under the *Occupational Health and Safety Act, 1993* have replaced the *Occupational Health and Safety Regulations* adopted in 1981 and amended in subsequent years.

These comprehensive regulations deal with a variety of subjects, including the following: notice and investigation of certain accidents and dangerous occurrences at a place of employment; general duties of employers and workers; the employment of young persons; the content of an occupational health and safety program; inspection of a place of employment; working alone or at an isolated place; the content and implementation of a harassment policy; the content of a policy statement on violence at prescribed places of employment; occupational health committees and occupational health and safety representatives and their training; first aid; general health requirements; personal protective equipment; noise control and hearing conservation; safety of machines and powered mobile equipment; safety in construction and demolition work; hoists, cranes and lifting devices; robotics; work in confined spaces; work in compressed air; diving operations; chemical and biological substances; controlled products - the Workplace Hazardous Materials Information System; asbestos; silica processes and abrasive blasting; fire and explosion hazards; safety in forestry and mill operations; safety in oil and gas operations; and additional protection for electrical workers, health care workers and fire fighters.

These regulations came into force on December 4, 1996, except for Part XXXII dealing with additional protection for fire fighters, which will take effect on December 4, 1997.

In **Nova Scotia**, the *Occupational Health and Safety First Aid Regulations* under the *Occupational Health and Safety Act* took effect on January 1, 1997 replacing other first aid regulations adopted in past years. They cover all workplaces to which the *Occupational Health and Safety Act* applies. They deal with such topics as the general responsibilities of employers and the duties of persons at a worksite, the circumstances in which an employee

must hold a first aid certificate and the type of certificate, the creation and maintenance of records relating to the administration of first aid, the duties of first aid attendants, the accessibility of first aid services and supplies, the contents of first aid kits, requirements for first aid rooms and the circumstances when they must be provided, and first aid remote location plans. Under the regulations, the Executive Director of Occupational Health and Safety has the following powers in respect of a particular workplace or worksite: to require provision of additional first aid supplies or services; to approve variations from the requirements contained in the regulations; to grant exemptions from these requirements where compliance is not practicable; or to prescribe such first aid services, requirements and supplies as he/she considers necessary or advisable.

Also in Nova Scotia, *Occupational Health and Safety Appeal Panel Regulations* under the *Occupational Health and Safety Act* set out a selection process for appeal panels. An appeal panel hears an appeal of an order or decision of the Executive Director of Occupational Health and Safety or any person acting on his/her behalf. It is composed of a chair and of two members, one representing employers and of one representing employees. When the parties agree in writing, a single person may be designated as the appeal panel. All these persons are selected from a list of names established by the Governor in Council.

These regulations also provide for appeal procedures. They took effect on February 25, 1997. *Regulations respecting adjudication committees* made in 1986 will be repealed on December 31, 1997.

In the **federal** jurisdiction, effective December 5, 1996, amendments have been made to the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code* to improve the minimum occupational safety and health standards established by these regulations and to contribute to the removal of any barriers to the employment of disabled persons implicit in the regulations.

The amendments oblige employers, where necessary, to provide information, instruction, training and warnings specified in the regulations in alternate media. "Alternate media" is defined as any method of communication that permits an employee with a special need to receive any information, instruction or training required by the regulations to be provided, including braille, large print, audio tape, computer disc, sign language and verbal communications.

The amendments also specify the following: that all barricades and guardrails required by the regulations be made highly visible; that signs and warnings be located at a height or volume that is visible or audible to a person with a disability; that high capacity, portable, open-flame heating devices be well marked; that double action swinging doors allow for persons using such a door to be aware of persons on the other side; and that the employer consult with employees having special needs in developing emergency procedures. In connection with emergency procedures, a provision has been introduced to require the development of a written evacuation procedure for fire emergency situations, and the employer is required to appoint monitors, when needed, for persons who require special assistance in evacuating the building.

In **New Brunswick,** two separate bills (Bill 38 and Bill 92) have brought some amendments to the *Workplace Health, Safety and Compensation Commission Act.*

The amendments include changes dealing with reconsideration of matters previously decided by the Workplace Health, Safety and Compensation Commission.

Under the new provisions, where it is made to appear to the Commission that, if a matter previously decided by it is reconsidered, new evidence presented will substantially affect the matter, nothing prevents the Commission from reconsidering it. In such a situation, the Commission has authority to rescind or modify any decision, order or ruling previously made.

Any decision made as the result of the reconsideration of any decision, order or ruling of the Appeals Tribunal, established under the Act, is final, subject only to a review by the Court of Appeal on a question of jurisdiction or law.

Another amendment permits the appointment of three or more representatives of workers and an equal number of representatives of employers as members of the Commission's board of directors. Previously, the number of representatives for each group was limited to three.

These amendments took effect on February 28, 1997.

In **Quebec**, *An Act to amend the Act respecting industrial accidents and occupational diseases and the Act respecting occupational health and safety* (Bill 74) was assented to on December 23, 1996.

In addition to bringing various amendments to the *Act respecting industrial accidents and occupational diseases,* this Act has abrogated a provision of the *Act respecting occupational health and safety* stipulating that the sums required for its application and that of the regulations relative to inspection are taken out of the moneys granted for that purpose by the Quebec Legislature. Effective March 31, 1997, the Occupational Health and Safety Commission (Commission de la santé et de la sécurité au travail) pays for those costs.

Also in Quebec, *An Act to establish the Commission des lésions professionnelles and amending various legislative provisions* (Bill 79) was assented to on June 12, 1997.

The purpose of that Act is to reform the entire process for contesting decisions made under the *Act respecting industrial accidents and occupational diseases* and the *Act respecting occupational health and safety*. It will come into force on a date or dates to be set by the government of Quebec.

The Act amends the *Act respecting industrial accidents and occupational diseases* to establish an employment injuries board to be known as the "Commission des lésions professionnelles" charged with hearing and deciding contestations of decisions made by the Occupational Health and Safety Commission (Commission de la santé et de la sécurité du travail) after an administrative review. The employment injuries board will consist of two divisions, the financial matters division and the employment injuries prevention and compensation division

With respect particularly to the *Act respecting occupational health and safety,* the review boards it establishes will be abolished and replaced with an administrative review process carried out on the basis of the record by a civil servant of the Commission. Any person who believes he/she has been wronged by a decision made by the Commission on certain questions, such as an inspector's order, may contest it before the employment injuries board within the prescribed time limits.

In addition, *a Regulation to amend various regulatory provisions respecting occupational health and safety* was adopted under Quebec's *Act respecting occupational health and safety*.

The purpose of this regulation was to lighten existing regulations by revoking certain regulations which, in fact, were no longer enforced because of their obsolescence or by transferring into general regulations the essential elements of other regulations. Thus the *Regulation respecting shipyards* and the *Regulation respecting ice cutting* were revoked, and the *Regulation respecting industrial and commercial establishments* was amended. In the later case, provisions added to the regulation provide for the following: Division IX of the *Safety Code for the construction industry* applies to any work carried out in compressed air, Division VII of that Code applies to any work carried out with an explosive actuated tool; and Division V of that same Code applies to any work carried out near an aerial electrical line.

Similarly, provisions added to the *Regulation respecting industrial and commercial establishments* apply to any blasting work or work requiring the use of explosives. However, they do not apply to such work where it is carried out on a construction site (the work is then governed by the *Safety Code for the construction industry*) or in a mine (the work is then governed by the *Regulation respecting occupational health and safety in mines*).

The regulation also revoked the following regulations: the *Regulation respecting the shoring of concrete formwork*, the *Regulation respecting the handling and use of explosives*, the *Regulation respecting mine rescue stations*, the *Regulation respecting the protection of compressed air workers*, the *Regulation respecting reviews related to inspections*, the *Regulation respecting work carried out in the vicinity of electric power lines*, and the *Regulation respecting the use of explosive actuated tools*.

Provisions have been added to the *Regulation respecting occupational health and safety in mines* concerning rescue stations for underground mines.

The regulation came into force on April 24, 1997.

In **Manitoba**, effective June 27, 1997, *The Workplace Safety and Health Amendment Act (2)* (Bill 32) has increased the fines applicable to persons guilty of an offence under section 54 of the *Workplace Safety and Health Act*. For most types of offences enumerated in that section, the maximum fine for a first offence has been increased from $15,000 to $150,000 and, in the case of a continuing offence, the maximum additional fine is $25,000 (previously $2,500) for each day during which the offence continues. For a second or subsequent offence, the maximum fine has been increased from $30,000 to $300,000 and, in the case of a continuing offence, the additional maximum fine is $50,000 (previously $5,000) for each day during which the offence continues.

When a person is guilty of an offence for contravening any provision of the Act not specified in section 54 or for failing to comply with an order or direction made under the Act or the regulations, the maximum fine is increased from $2,500 to $25,000.

In **Alberta**, the *Occupational Health and Safety Grants Regulation*, dealing with grants authorized by the Minister of Labour under the *Occupational Health and Safety Act,* was repealed on June 18, 1997.

In **Ontario**, Bill 99, *An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts,* was tabled on November 26, 1996.

Bill 99 proposes to repeal the *Workers' Compensation Act* and to replace it with the *Workplace Safety and Insurance Act, 1996*, set out in a schedule contained in the Bill. The *Blind Workers' Compensation Act* and the *Workers' Compensation Insurance Act* would also be repealed. The Workers' Compensation Board would be continued as the Workplace Safety and Insurance Board.

With respect to occupational health and safety, the Workplace Health and Safety Agency established under the *Occupational Health and Safety Act* would be terminated, and its functions would be transferred to the Workplace Safety and Insurance Board. The Board would be given additional powers and duties relating to the designation of safe workplace associations, medical clinics and training centres that specialize in occupational health and safety matters. Once designated, these would be eligible for financial assistance from the Board and would be required to operate in accordance with the relevant legislation and the standards established by the Board.

In addition, the Board would pay persons who are regularly employed in the construction industry for the time they spend fulfilling the requirements to become certified for the purposes of the *Occupational Health and Safety Act*. However, the Board would not pay persons who may represent management as members of a joint health and safety committee.

The Board could also establish a workplace health and safety advisory council to advise it on issues the Board considers appropriate.

B. Radiation Protection

In **Saskatchewan**, the *Radiation Health and Safety Amendment Act, 1996*, which was described in the *Highlights of Major Developments in Labour Legislation (1995-1996),* was proclaimed in force on November 1, 1996.

C. Fire Prevention

In **Ontario**, the *Fire Protection and Prevention Act, 1997* (Bill 84) was assented to on May 27, 1997, and will come into force by proclamation. It will repeal a number of Acts relating to fire services and consolidate them into one statute. These include, for example, the *Egress from Public Buildings Act*, the *Fire Departments Act* and the *Fire Marshals Act*.

The Act delineates the responsibilities for the provision of fire protection services in the province. It provides that municipalities are responsible for the provision of fire protection services within the municipality. They must, at a minimum, establish a program including public education with respect to fire safety and certain components of fire prevention. They may offer such other fire protection services as considered necessary. The Fire Marshal may monitor and review the fire protection services provided by municipalities and make recommendations for improving those services. The Fire Marshal, a services board or a prescribed person or organization may enter into agreements to provide fire protection services in territory without municipal organization.

The Act also establishes the Fire Marshal's Public Fire Safety Council. The objects of the Council include advising the Fire Marshal on matters of fire safety, promoting fire safety in the province, and producing and distributing materials for public education on fire safety. Five years after the coming into force of the provisions creating the Council, the Minister will submit a report to the Lieutenant Governor in Council regarding its continuation, modification or dissolution.

D. Mining Safety

In **New Brunswick,** a new *Underground Mine Regulation* was adopted under the *Occupational Health and Safety Act*. Effective January 1, 1997, this comprehensive regulation applies to a place of employment that is an underground mine and to the buildings and plant on the surface used in connection with the extraction of any metallic or non-metallic mineral or mineral-bearing substance from the mine, but does not include the buildings and plant on the surface used for the processing of the mineral or substance.

The regulation is divided into ten Parts and provides for numerous health and safety requirements. These deal, for example, with the following topics: notice of opening or reopening an underground mine, certificates of fitness, medical examination of employees, employee training, fall protection, regular mine inspections, rockbursts and seismic events, voice communication system, dust control, water control, escapeways, air quality, emergency preparedness and fire protection, track haulage and mobile equipment, explosives, climbing conveyances, air compressors, and mine hoisting plants.

In **Quebec,** a *Regulation to amend the Regulation respecting occupational health and safety in mines and amending various regulatory provisions* was adopted under the *Act respecting occupational health and safety*.

Various amendments of a technical nature have been made to the *Regulation respecting occupational health and safety in mines and amending various regulatory provisions*. They contain changes to the provisions dealing, among others, with the following topics: the passages through which the workers may evacuate work stations in cases of emergency; air quality (including the addition of a schedule to the regulation on a sampling and analysis protocol for respirable combustible dust); miner lamps used underground; the use of a stationary natural gas or propane heating system in a building covering an opening to the surface of an underground mine; and non-railbound motorized vehicles. The amendments took effect on July 10, 1997.

In **Ontario,** a regulation has amended the regulation on mines and mining plants made under the *Occupational Health and Safety Act*.

The amendments are of a technical nature and deal with many subjects, including the following: workers who are not supervisors and who work alone in an underground mine; motor vehicles, not operating on rails and having a certain type of braking system, put into service on or after August 16, 1997; explosives kept or stored on the surface; magazines, storage containers and explosive storage areas in an underground mine; electrical blasting operations; equipment that can be operated or moved by remote control using a system, device or controller that produces radio frequencies or radiates electromagnetic energy; elevators, mine hoisting plants and shaft conveyances; and the precautions to be taken before material containing cyanide is used for back fill in an underground mine.

All the amendments came into force on August 16, 1997, except for one dealing with certain electrical mobile equipment, which will take effect on August 16, 1998.

E. Offshore Petroleum Operations

In **Newfoundland,** several regulations have been amended or made under the *Canada-Newfoundland Atlantic Accord Implementation Newfoundland Act*.

Modifications to the *Offshore Area Petroleum Diving Regulations* include changing the title of the regulations to *Offshore Area Petroleum Diving Newfoundland Regulations* and a number of amendments dealing, among others, with the granting of an authorization in respect of a proposed diving program and the issuance of diving certificates as well as other types of certificates attesting qualification.

Four new regulations were also adopted under the same Act.

The *Offshore Area Petroleum Geophysical Operations Newfoundland Regulations* deal, among other things, with radio communications, safe working practices, crew safety requirements, evacuation routes, no smoking areas, hours of work, and training of geophysical crew.

The *Offshore Area Petroleum Production and Conservation Newfoundland Regulations* contain provisions on the safety and training of personnel, involved in production operations, who require special skills.

The *Offshore Certificate of Fitness Newfoundland Regulations* deal with the issuance of certificates of fitness for offshore diving, drilling, production or accommodation installations.

The *Offshore Petroleum Installations Newfoundland Regulations* establish minimum safety requirements for offshore diving, drilling, production or accommodation installations and equipment on those installations.

In addition, a number of consequential amendments were made to the *Offshore Petroleum Drilling Newfoundland Regulations*

F. Elevating Devices, Boilers and Pressure Vessels, and Other Installations

In **Newfoundland**, the *Public Safety Act*, which replaced several Acts, including the *Elevators Act*, the *Boiler, Pressure Vessel and Compressed Gas Act* and the part of the *Occupational Health and Safety Act* dealing with electrical inspections, was proclaimed into force on January 1, 1997.

Amusement Rides and Elevating Devices Regulations, *Boiler, Pressure Vessel and Compressed Gas Regulations*, and *Electrical Regulations* have been adopted under the new Act. They replace regulations dealing with the same subjects, which were adopted in previous years.

In **Ontario**, a regulation has amended another regulation under the *Safety and Consumer Statutes Administration Act, 1996* concerning the administration of a number of Acts. It provides that the Technical Standards and Safety Authority, with which the Minister of Consumer and Commercial Relations has entered into an administrative agreement dated

January 13, 1997, is designated as the sole administrative authority for the purpose of administering various Acts, including the *Boilers and Pressure Vessels Act*, the *Elevating Devices Act*, the *Gasoline Handling Act,* the *Operating Engineers Act* and the regulations issued under those Acts. However, the power to make regulations remains with the Lieutenant Governor in Council.